Supreme Court, U. S.
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No. 77-1347

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1547, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this case on December 23, 1977.

OPINIONS BELOW

The decision of the National Labor Relations Board, adopting the Administrative Law Judge's opinion is reported at 225 NLRB No. 7 and is reprinted as Appendix B. The Judgment Order of the Court of Appeals is unreported and is reprinted as Appendix A.

JURISDICTION

The judgment of the Court of Appeals was entered on December 23, 1977. The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether, as the Second Circuit has ruled, employees who engage in conduct which violates the terms of a collective bargaining agreement are precluded from thereafter invoking the protection of the National Labor Relations Act ["NLRA"], 29 U.S.C. § 157 when the Union procures the discharges and attempts to restrain their activities, or whether, as the District of Columbia Circuit ruled in the instant case, employees are free to invoke the NLRA's protections after repeatedly breaching their contractual obligations.

STATUTORY PROVISIONS INVOLVED

Section 7 of the NLRA, 29 U.S.C. § 157, provides:

> "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title."

Section 8(b)(1)(A) and (2) of the NLRA, 29 U.S.C. § 158(8)(b)(1)(A) and (2) provides:

> "(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> "(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title. *Provided*, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; . . .
>
> "(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;"

STATEMENT OF THE CASE

Petitioner, Local 1547, International Brotherhood of Electrical Workers, is the exclusive bargaining representative for, *inter alia*, workers in the electrical industry throughout Alaska. Petitioner has signed a collective bargaining agreement with the National Electrical Contractors Association, Alaska Chapter, an organization which represents various electrical contractors in Alaska in collective bargaining. That agreement contains provisions designed to assure that work opportunities and overtime work opportunities are made available to union members in a fair and equitable manner.

On August 22, 1975, agents of petitioner appeared at the site of a job being done by M & M Electric Company, a member organization of the Contractors Association and hence a party to the collective bargaining agreement. Petitioners' agents went to the site because they suspected that overtime work had been allocated, in violation of the collective bargaining agreement, to selected employees, including three persons who had recently moved to Alaska from Indiana in search of jobs. These persons were friends of the M & M foreman from Indiana, were living with him and with the person in charge of day-to-day operations at M & M, and

had managed to obtain a dispatch to M & M the day before, despite their low position on the dispatch list, when M & M has made its dispatch request most undesirable by, *inter alia,* stating that there would be no overtime available to persons accepting the dispatch. (App. 32-36).[1] When petitioners' agents arrived at the job site they found that overtime was, in fact, being performed by two of the three Indiana arrivals and by two other men, also friends of the foreman.[2] An unpleasant and unfortunate scene unfolded, in which tempers flared and threats of violence and to confiscate tools apparently were communicated by agents of petitioner to the employees who were working overtime. (App. 16-23). Three days later, the employees in question and the foreman were discharged by M & M; the Administrative Law Judge found that the conduct of petitioner's agents was the cause. (App. 51-55).

Two of the discharged employees filed charges against petitioner with the National Labor Relations Board alleging that petitioner had violated §§ 8(b)(1)(A) and 8(b)(2) of the NLRA. A hearing was held by Administrative Law Judge William J. Pannier. Petitioner's position before the

[1] The job order was for a 30 day, 40 hour per week dispatch, the least desirable type of dispatch, and one which was rarely requested. All of the roughly thirty senior people declined the dispatch, allowing the foreman's friends to accept the jobs. Interestingly, the day before the job order was placed, the employer had phoned the hiring hall and requested a dispatch by name of one of the three friends; the employer was informed that because of that person's position on the dispatch list he could not be dispatched.

[2] These two men also lived with the foreman; one of the two was also a prior acquaintance from Indiana. Two other men, who were dispatched the day before along with the three from Indiana but who had no prior acquaintance with the foreman, were not assigned overtime. Notwithstanding this fact—and the curious circumstances surrounding the job order, see n. 1 *supra*—the ALJ found that the need for overtime work was unexpected and that the overtime assignments were allocated in accordance with the collective bargaining agreement. App. 57.

Administrative Law Judge was that because the charging parties were guilty of manifold violations of the collective bargaining agreement, they were not, as a matter of law, entitled to seek the protection of the Act. In support of this position petitioner relied, *inter alia,* on the decision of the Second Circuit in *NLRB* v. *Furriers Joint Council,* 224 F.2d 78 (1955) in which, on similar facts, the court refused to enforce a Board decision finding a union guilty of an § 8(b)(1)(A) violation for using "strong arm tactics" with respect to employees who had breached the collective bargaining agreement's provision forbidding overtime moonlighting. *Abe Meltzer, Inc.,* 108 NLRB 1506 (1954). The ALJ rejected the argument, reasoning that:

> [T]he Board has adhered to its original position in that case . . . and I am bound by the Board's decision in that regard. App. 57.
>
> • • •
>
> Respondent's primary arguments are devoted to the overall contention that the discriminatees had been involved in a conspiracy to violate the collective-bargaining agreement and that, consequently, no violation should be found or that, in any event, no remedial relief should be granted which would provide any benefit to these 'conspirators.' At the outset, one point should be made most clear: even were I to find that the discriminatees had engaged in the misconduct attributed to them by Respondent, I would still find a violation in this case. App. 59-60.
>
> • • •
>
> [T]he point of the instant proceeding was not one of litigating whether or not there has been a contract violation or a hiring hall violation.[3] App. 62.

[3] As noted in note 2, *supra,* the ALJ found that the charging parties had not violated the collective bargaining agreement by working overtime on the night on which the threats were made. At the same time, however, the ALJ was careful to avoid "placing

Accordingly, the ALJ found petitioner guilty of the two charged unfair labor practices with respect to the charging parties and three other discharged employees (who had not filed charges), and found petitioner guilty of only an § 8(b)(1)(A) violation with respect to the discharged foreman (who also had not filed a charge).

Petitioner appealed the ALJ's decision to the Board, arguing again that the charging parties' multiple contract violations precluded them from invoking the NLRA's protections. The Board by order adopted the ALJ's opinion. Petitioner then sought review before the United States Court of Appeals for the District of Columbia Circuit. That court affirmed by judgment order the Board's decision, notwithstanding the fact that the Board had adopted an Administrative Law Judge's opinion which expressly declined to follow the Second Circuit's *Furriers* opinion. Petitioner now asks this Court to resolve the circuit conflict that has arisen from the Court of Appeals' abbreviated treatment of this case.

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angelic wings'' on the charging parties. He found that one of the two had performed work outside of his job classification. App. at 60. He found that "the very high amount of overtime for which [the other charging party] was compensated . . . may well indicate an impropriety through performance of additional work." App. at 62. And he found that both charging parties knew and failed to report that the foreman had hired his son to work without going through the hiring hall. App. at 60.

Because he concluded that contract violations were essentially irrelevant to the unfair labor practice charges, the ALJ did not rule on petitioner's contention that the employees and the foreman jointly violated the collective bargaining agreement in numerous other respects. (The ALJ did find, however, that in engaging in the challenged conduct, petitioner's agents were not motivated by any of these prior violations, but by their mistaken belief that the employees were acting improperly in performing overtime on the night in question. App. at 50.)

REASONS FOR GRANTING THE WRIT

WHERE, AS HERE, CHARGING PARTIES ARE GUILTY OF WHOLESALE CONTRACT VIOLATIONS, THOSE PARTIES ARE PRECLUDED FROM INVOKING THE NLRA WHEN THE UNION ATTEMPTS TO RESTRAIN THEM OR PROCURE THEIR DISCHARGES. THE DECISION BELOW TO THE CONTRARY CONFLICTS WITH THE SECOND CIRCUIT'S DECISION IN *FURRIERS*.

Petitioner has never denied that certain incidents took place between the parties which were neither pleasant nor according to the "Queensbury Rules." They must be considered, however, in the context of the charging parties' prior history of willful deception and deliberate flouting of the collective bargaining agreement for their own personal and financial advancement. Thus viewed, the incidents are recognizable as outbursts of outrage, "robust language and clash of strong personalities that may be commonplace in various labor contexts." *Farmer* v. *Carpenters Local 25*, 430 U.S. 290, 306 (1977).

Under those circumstances the NLRB should have stayed its hand and refrained from granting these persons the protection of the NLRA. Any other course of action would effectively give blanket approval to their illegal conduct. If petitioner Union used improper force or threats of physical action when confronting the charging parties there are other forums for reviewing and/or proscribing such conduct.[4] That is not the responsibility of the NLRB whose function it is to make sure that the protection of the NLRA is limited to those who merit it.

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[4] In fact the charging parties are presently suing the Local for damages arising from this action in the Superior Court for Alaska, Fourth Judicial District, *Lingo et al.* v. *Local 1547, IBEW, et al.* No. 77-1577. It is the Petitioner's contention that this damage action is the only way in which these matters should be tested.

Over two decades ago, the Second Circuit held that where, as here, certain employees violated their collective agreements, they were not entitled to avail themselves of the protection of the Act. That principle was applicable even though in that case, as here, the action of the Union in correcting this violation was carried to the point of physical assault. See *NLRB* v. *Furriers Joint Council of New York, I.F.L.W.U.*, 224 F.2d 78 (2nd Cir. 1955). *Furriers* involved two employees who had violated the overtime-moonlighting provisions of a contract by working on Washington's birthday in a shop other than the one in which they were employed (which, pursuant to the contract, was closed). They were caught in the act by a union representative who told them to stop working and go to the union office. One stopped but did not go; the other kept on working. The following day the man who kept working arrived at his regular workplace to be met by a mob led by the union official and other officers and workers. An argument ensued, during which time the other worker arrived. The union officers blocked the entrance to the building and physically assaulted one of the two. The NLRB held this conduct violative of § 8(b)(1)(A).

The Second Circuit refused to enforce the Board's order. It held that because of the validity of the contract provision in question the employees could not breach the contract and then invoke the Board's processes when the labor union took steps to remedy that breach. The court stated it did not condone the violence, but concluded that:

> "We agree with the view . . . that Section 8(b)(1)(A) was not intended to confer on the Board general police power covering all action of violence by a Union, but rather was intended to bring within its scope only such acts of violence as were directed against the exercise by employees of rights guaranteed by Section 7, and that employees have no protected right under Section 7 to violate the valid provisions of a collective bargaining agreement. *Id.* at 80.

The court aptly pointed out that an interpretation to the contrary would protect employees who willfully violate labor management agreements. This would be inconsistent with the "underlying purpose of the Act . . ." *Id.* The court thereupon denied the NLRB's petition for enforcement and said that the Board "should have dismissed the charge." *Id.*

Furriers remains good law today. It stands for the proposition, fully applicable here, that if total examination reveals conduct by the charging parties to the dispute which is violative of the collective bargaining agreement, then the protection of the NLRA is not theirs to claim. In short, there are simply some incidents which do not fall within the province of the NLRB.

The decision of the District of Columbia Circuit in the instant case creates a conflict between the circuits over this issue. By affirming the Board, the Court below has sanctioned a process which completely ignores any meaningful examination of the enforcing union's actions. Instead willful contract violators can pursue not only private remedies but seek NLRA protection as well.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1547, *Petitioner,* v. NATIONAL LABOR RELATIONS BOARD, *Respondent.*	No. 76-1758

JUDGMENT

Before: LEVENTHAL, MACKINNON and WILKEY, Circuit Judges.

THIS CAUSE was submitted to this Court upon a petition filed by International Brotherhood of Electrical Workers, Local 1547, Anchorage, Alaska, to review an order of the National Labor Relations Board issued against said Petitioner, its officers, agents, and representatives, on June 29, 1976, and upon a cross-application filed by the National Labor Relations Board to enforce said Order. From the study of the briefs and transcript of record, and without oral argument, the Court, on November 1, 1977, being fully advised in the premises, issued an Order granting enforcement of the Board's order.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by the United States Court of Appeals for the District of Columbia Circuit that the said order of the National Labor Relations Board in said proceeding be enforced, and that International Brotherhood of Electrical Workers, Local 1547, Anchorage, Alaska, its officers, agents, and representatives abide by and perform the directions of the Board in said order contained.

(s) HAROLD LEVENTHAL
Circuit Judge, United States
Court of Appeals for the
District of Columbia Circuit

(s) GEORGE E. MACKINNON
Circuit Judge, United States
Court of Appeals for the
District of Columbia Circuit

(s) MALCOLM R. WILKEY
Circuit Judge, United States
Court of Appeals for the
District of Columbia Circuit

APPENDIX B

225 NLRB No. 72

JPW
D—1458
Fairbanks, Alaska

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1547
(M & M Electric Company)

and Case 19-CB-2499

DANNY GREENLAND, *an Individual*

and Case 19-CB-2508

THOMAS HILL, *an Individual*

DECISION AND ORDER

On March 31, 1976, Administrative Law Judge William J. Pannier III issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a

supporting brief, and the General Counsel filed limited exceptions and brief and a brief in support of the Administrative Law Judge's Decision.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, International Brotherhood of Electrical Workers, Local 1547, Anchorage, Alaska, its officers, agents, and representatives, shall take the action set forth in said recommended Order.

Dated, Washington, D.C., June 29, 1976.

HOWARD JENKINS, JR., Member

JOHN A. PENELLO, Member

PETER D. WALTHER, Member

National Labor Relations Board

(Seal)

JD-(SF)-71-76
Fairbanks, Alaska

[1] The Respondent has requested oral argument. This request is hereby denied, as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
Branch Office
San Francisco, California

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1547
(M & M Electric Company)

and Case 19-CB-2499

DANNY GREENLAND, *An Individual*

and Case 19-CB-2508

THOMAS HILL, *An Individual*

Philip McLeod, of Seattle, Wash., for the General Counsel.

Robert Goldberg, of Anchorage, Alaska, for the Respondent.

Thomas Hill, of Orlando, Fla., and *Danny Greenland,* of Tumwater, Wash., appearing on their own behalf.

DECISION

Statement of the Case

WILLIAM J. PANNIER III, Administrative Law Judge: This matter was heard by me in Anchorage, Alaska, on January 13 through 16, 1976. On October 30, 1975,[1] the Acting Regional Director of Region 19 of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and notice of hearing based upon unfair labor practice charges filed by Danny Greenland in Case No. 19-CB-2499 on August 27, and by Thomas Hill in Case No. 19-CB-2508 on September 11, and alleging violations of Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.*, herein called the Act.

[1] Unless otherwise stated, all dates occurred in 1975.

All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based upon the entire record, upon the briefs which were filed, and upon my observation of the demeanor of the witnesses, I make the following:

Findings of Fact

I. JURISDICTION

At all times material herein, M & M Electric Company, herein called M & M, has been an Alaska corporation with an office and place of business located at Fairbanks, Alaska, where it has been engaged in the business of electrical contracting and installation. Moreover, at all times material herein, M & M has been a member of, and has been represented by, National Electrical Contractors Association Alaska Chapter, herein called NECA, an employer association whose membership consists of various electrical contractors in Alaska and which exists for the purpose, *inter alia,* of representing employers in collective bargaining with labor organizations.

During that past calendar or fiscal year, M & M purchased goods and materials valued in excess of $50,000 which it received directly from firms located outside the State of Alaska or which it received from firms located within the State of Alaska which, in turn, received them directly from outside the State of Alaska. Additionally, during the past calendar or fiscal year, M & M sold goods and services valued in excess of $50,000 directly to firms located outside the State of Asaska and to firms located within the State of Alaska which, in turn, made annual sales equaling or exceeding $50,000 to customers located outside the State of Alaska or which, in turn, purchased goods and services valued in excess of $50,000 directly from points located out-

side the State of Alaska. Finally, in the aggregate, the electrical contractor members of NECA, in the normal course and conduct of their business operations, annually purchase goods and materials valued in excess of $50,000 directly from points outside the State of Alaska and/or make sales to or perform services for customers located outside the State of Alaska which have a value in excess of $50,000.

Therefore, I find, as admitted in Respondent's answer, that at all times material herein, M & M and NECA have been employers within the meaning of Section 2(2) of the Act, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organization Involved

At all times material herein, International Brotherhood of Electrical Workers, Local 1547, herein called Respondent, has been a labor organization within the meaning of Section 2(5) of the Act.

III. Issues

1. Whether Respondent's conduct on August 22 and 23 was a permissible part of an effort to prevent M & M and certain of its employees from violating hiring hall operations or whether these acts were taken with the objective of causing the discharge of these employees to demonstrate Respondent's control over the labor relations policies and practices of M & M and NECA, thereby encouraging membership in and subordination to Respondent in violation of Section 8(b)(1)(A) and (2) of the Act.

2. Whether the discharge of six individuals on August 25 resulted from Respondent's prior conduct and, if so, whether Respondent thereby violated Section 8(b)(2) of the Act.

IV. The Alleged Unfair Labor Practices

A. *Events of August 22*

M & M is a corporation owned by three individuals: Jerry and Tom Monson, who are brothers, and Dennis Morrelli, who was primarily responsible for the day-to-day operation of M & M during the period prior to the events giving rise to the complaint. At all times material, Respondent and NECA, of which M & M is a member, have been parties to a colledtive-bargaining agreement, under the terms of which Respondent is "... the sole and exclusive source of referrals of applicants for employment." There is no contention that this provision or the manner in which the hall is operated violate the Act.

The six alleged discriminatees had all been cleared by Respondent for work with M & M —Danny Greenland as a material handler in April or May; Alfred Lingo as a journeymen electrician, although he subsequently was promoted to working foreman,[2] in early March; Thomas Hill as a journeyman electrician in early August; and Larry L. Holder, George Klink and John Hatfield as journeymen electricians on August 21, although they did not report for work until the morning of August 22. During the day on August 22, all six of these individuals worked on projects for M & M and there is no contention that their work in any way violated any collective-bargaining agreement provisions or any regulations of Respondent. The workday ended at 4:30 p.m. and, as normal, all of the M & M employees returned to M & M's office-trailer in Fairbanks. There they encountered Respondent's Fairbanks Asst. Business Manager Dan McLean, who appointed two additional stewards for M & M projects and then left. After McLean's departure, most of the M & M employees departed as well, leaving only

[2] There is no dispute regarding the fact that in this capacity Lingo was a supervisor within the meaning of Section 2(11) of the Act.

Greenland, Hill, Holder, Klink and Hatfield to remain having coffee with Lingo. As they talked, Lingo received a telephone call from Morrelli, who said that work had to be performed immediately at the Walsh construction cite, located 3 miles outside of Fairbanks behind the Van Horn Lodge, as the contractor wanted to progress with additional work and wanted M & M's work to be completed that day.[3] Lingo told the men who were with him that they would have to perform the work that night and, though reluctance was expressed by Holder, Klink and Hatfield, who had intended to celebrate Holder's birthday by having a party, all five agreed to do the work.

Greenland, Hill, Klink and Hatfield reported to the Walsh site after having dinner and commenced work. Holder reported to the site, but as he had received disconcerting personal news during the dinner period, he merely parked his truck, walked into the warehouse to notify Hatfield that he did not intend to work, and walked to the Lodge for a drink. Accordingly, Holder was not immediately aware that shortly after the other M & M employees began work, McLean and several other individuals[4] entered the warehouse with the admitted objective of disrupting further work because they believed that the M & M employees were performing work in a manner and at a time when, in Respondent's view, such work was not permitted under the collective-bargaining agreement. Thus, Klink testified that when he had been asked what was going on and had said that the M & M employees were working overtime, McLean had responded "... the hall hadn't been notified we was going to work overtime." Similarly, Hatfield testified that he had been told by McLean "you know what's going on, you're on this job illegally."

[3] Lingo testified that he and Morrelli had worked out an arrangement whereby on certain projects each would independently prepare cost estimate and if Lingo's estimates were lower, the two would split the differential if, in fact, the costs proved to be below Morrelli's higher estimates. He further testified that, to his knowledge, this arrangement, which provided him with income in addition to that which he was paid under the collective-bargaining agreement, did not violate the agreement or any regulation of Respondent—an assertion which Respondent has not disputed.

[4] The estimates as to the number of persons with McLean varied considerably, with the alleged discriminatees' estimates being between 10 and 30 and with Respondent's witnesses testifying that there were 10 people in their group, although McLean admitted that his group outnumbered the M & M employees by "about two-to-one."

During the course of this confrontation, the M & M employees were directed to leave the State of Alaska. For example, Raymond R. "Gabby" Johnson admitted that as events unfolded, he had told Klink to "... get the blankety-blank out of Alaska, that we didn't need their kind up here, that they knew they had run over the referrals. ..." Johnson also acknowledged having made the same type of comment to Hatfield:

> ... I told him to get the blankety-blank out of Alaska, we didn't need his kind in here running the referral book—I told him "you sobs. know what you've done, you've run over the referral books, we're all up here trying to make a living, we're living in these high-priced conditions, you people run over the book and we g.d.-don't like it and you can get the blankety-blank out of Alaska!"

Johnson pointed out that he had been yelling that evening and all witnesses testified that there had been considerable yelling and name-calling directed at the M & M employees.

The directions to leave the State were reinformed by threats concerning what would happen if the M & M employees chose to remain in the State. Both Klink and Hatfield testified that Johnson and McLean had told Klink that he would be taken out in a box if he remained and Hatfield testified that McLean had directed similar threats to Hill and Greenland. Moreover, Hatfield testified that McLean had said that he would kill Klink if the latter did not stay

out of the State. Johnson did not deny telling the M & M employees that they would be shipped out of Alaska in boxes if they did not leave voluntarily and, while McLean denied generally that he had threatened the M & M employees, he acknowledged that "a remark about a pine box, ship the fellows home in one" could have been made, but claimed that he did not recall who had made the threat.

Nor did the group led by McLean confine its conduct to mere threatening words, for while they did deny possessing tools or weapons when they entered the warehouse, they did not deny the testimony that some of them had picked up tools being used for the job and that during the incident, one of them had been brandishing a pick-handle, another a shovel, and a third a dirt pick. Further, Johnson freely admitted that he had been holding a hammer during the confrontation, but he testified, in effect, that he had obtained it by virtue of having disarmed Klink:

> Mr. Klink was very nervous, Mr. McLean had asked him for his dues receipt and they were talking back and forth and arguing about dues receipts and I told him to drop that g.d. hammer and he did drop it. I think Godbey told him to drop it before me and he dropped it and I picked the hammer up sir.

However, Godbey was not called to corroborate this testimony. McLean, who did testify, did not corroborate Johnson in this regard, but merely testified that ". . . when we walked in I noticed one man drop a hammer." Furthermore, Johnson admittedly did more than simply hold a hammer, for he acknowledged that while yelling at Klink, he had been holding the hammer by the head in one hand while striking his other hand with the handle for emphasis. Greenland and Klink, however, both testified that Johnson had held the hammer by the handle and had repeatedly poked the claw-end at Klink while berating him, with the result that as Klink raised his arm to protect his face from the hammer, he was struck by the claw-end of the hammer and blood began to run over his wrist.[5] Johnson did not confine his conduct to Klink, for it is undenied that after he had chased Klink from the warehouse, Johnson returned and attempted to jab his hand under Greenland's rib cage, telling Greenland "I'd like to tear your guts out."

The M & M employees made two efforts to achieve a peaceful resolution of the matter. However, when Klink asked McLean why he did not bring the M & M employees before Respondent's Executive Board and seek to impose a fine if there was, in fact, a violation, McLean responded ". . . that he wanted us completely out of Alaska and he wasn't going to bring charges on use and if we didn't leave we'd be going out in a pine box in the morning, if we didn't leave that night we'd be leaving in a pine box."[6] Hatfield suggested that McLean contact M & M to straighten out the difficulty, but McLean simply ignored the suggestion and retorted: "you get out of Alaska and stay out of Alaska or I'll kill you."[7]

Klink fled the warehouse before McLean's group could collect his dues receipt, but Hatfield and Hill, left with no

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[5] Johnson denied unequivocally striking any of the men that evening. Although Klink acknowledged that in the excitement it was "possible" that his arm could have been cut by something other than the hammer, since the building was in "rough shape," he also testified that, to his recollection, nothing else had brushed against his wrist and, further, that he had seen the blood immediately after he had been poked by Johnson with the hammer.

[6] Respondent acknowledged that each of the matters which it raised in this proceeding as a defense to its conduct—working off-the-clock and poor workmanship—were ones for which intraunion charges could be filed against members. In fact, internal charges were filed against the alleged discriminatees, but not until October 21. Business Manager Isaac M. Waldrop, Jr., testified that they were not processed to avoid further allegations of unlawful conduct.

[7] While Johnson denied that Hatfield had suggested that he (Johnson) call the contractor, McLean did not deny that Hatfield had addressed such a suggestion to him, and Sobier, the only other witness interrogated concerning the matter, testified that if the comment had been made, he had not heard it.

route of escape, surrendered their dues receipts upon demand and Greenland, who was not a member of any labor organization, had his name written down by Amos Sobier.[8] It was at approximately this point that Holder returned from the Lodge and as he entered the warehouse, his dues receipt was also collected. Once the dues receipts had been collected, the M & M employees were then told to leave the warehouse. It was not denied that when Greenland had said that the M & M employees would get the trucks, McLean and Johnson had said not to do so, that "we'll take care of them." Nor was it disputed that when Hatfield made a similar suggestion, someone in McLean's group responded "We'll take the trucks." Thus, the M & M employees left the warehouse on foot, hurried along by the suggestion of a member of the McLean group that their clothes be taken.

The ordeal of the M&M employees was not yet to end, for as they walked along the Van Horn Road in the direction of Fairbanks, McLean approached them from behind in his car and when he neared to about 100 yards from them, he began to honk his horn, swerved to the shoulder of the road on which the M & M employees, now joined by Klink, were walking, and headed directly at them. To avoid being struck, the group of employees jumped into a ditch bordering the shoulder of the road. Incredibly, McLean admitted that he had engaged in this conduct, with the only dispute being his

[8] With the exception of Greenland, all of the alleged discriminatees were members of locals of the International Brotherhood of Electrical Workers, but not of Respondent. Thus, their dues receipts were their evidence of membership in good standing when they journeyed to other locals to be dispatched, as was the case when they had sought dispatch by Respondent. Interestingly, Amos Sobier and James Manning cast their testimony in terms of having requested the dues receipts to copy down the names of the individuals caught working that evening. At no point did they concede that the dues receipts were being confiscated. But they testified prior to McLean and the latter freely admitted both that he was aware of the names of the M & M employees at the time he had first seen them that evening and that his intention had been, in fact, to confiscate their dues receipts.

assertion that he was traveling 30 miles per hour while Greenland and Holder estimated his rate of approach to have been approximately 50 miles per hour. By way of explanation for this facet of his conduct toward the M & M employees that night, McLean explained that he had been ". . . just showing contempt for them."

Realizing that Klink's dues receipt had not yet been collected, McLean continued past the men and down the road for a short distance, at which point he stopped to wait for them to reach him. However, as he waited, he observed Lingo driving in his camper toward the Walsh site. When Lingo noticed the M & M employees across the road, he stopped the camper and, admitting Hatfield into the front with Lingo's wife and child and admitting the other four employees into the back of the camper, backed into a side road to turn around and return to Fairbanks. However, before Lingo could pull back onto Van Horn Road, McLean pulled his car across the front of the camper and two other vehicles, driven by members of McLean's group, blocked the camper, one on the back and the other on the side. Despite Lingo's pleas that his wife and son be permitted to leave, McLean insisted upon and obtained Lingo's dues receipt, after which he demanded to know what had happened to Klink. Advised by Lingo that Klink was in the back, McLean walked to the back door of the camper and asked for Klink's dues receipt, but the latter protested that he had already surrendered it. As McLean began to dispute Klink's assertion, Holder interrupted to demand that his own dues receipt be returned. McLean said that it would be sent to Holder's home local and Manning, who had joined McLean, said "you're not going to need it anyway." Ultimately, McLean made a final effort to obtain Klink's dues receipt by offering to release the camper if Lingo would leave Klink. While this was going on, Holder had slipped away to a nearby guard shack at the North Star Terminal where a call was placed to the police who arrived, but only after McLean had left the scene. After returning to Fair-

banks, the men told Morrelli, that same evening of the events which had transpired.

In defense of its actions on August 22, Respondent contends that it had been receiving reports for some time prior to the incident concerning the fact that work had been performed by M & M personnel in contravention of Respondent's hiring hall regulations and of the collective-bargaining agreement. Thus, argues Respondent, the events of Friday, August 22, were no more than a reaction to having finally discovered concrete proof of such misconduct. However, examination of the evidence presented by Respondent leaves considerable doubt as to the validity of this contention that it was merely reacting to a longstanding, but to then unproven, suspicion concerning the performance of work under unlawful circumstances.

Considering first the events of August 22 at the Walsh site, two matters are of significance: the trucks and the dues receipts. Following the departure of the M & M employees from the warehouse, the McLean group collected all tools and materials in the warehouse, loaded them on the trucks and then moved the trucks to NECA's Fairbanks facility, depositing the keys inside the building through the slot in the front door. While it is undisputed that no one in McLean's group had physically blockaded the paths of the M & M employees to the trucks that night, Respondent's witnesses did not deny the M & M employees' testimonies concerning the statements which the McLean group made concerning taking control of the trucks. Nor did Respondent's witnesses deny that the M & M employees had been herded out the door of the warehouse that was furthest from where the trucks were parked. Moreover, in attempting to explain their actions in collecting the tools and in moving the trucks, Respondent's witnesses gave conflicting reasons and, ultimately, one of them admitted that the true intent had been to impress upon the M & M employees that they should not have been on the job. Thus, both Manning and

McLean testified that the reason had been to protect the tools and to prevent anyone from stealing them. Johnson, however, testified that McLean had directed the members of his group to collect the tools and move the trucks to NECA because he had not wanted "anybody to say that we damaged any of their equipment or set fire to any of their equipment or anything . . .," thereby attributing the reason to concern for self-protection against subsequent accusations rather than to concern for the well being of the equipment. On cross-examination of steward Amos Sobier, the following testimony concerning the reason was elicited:[9]

> Q. During the time you were loading that material in the trucks was there any discussion about the fact that taking that material would or might impress on the men that they shouldn't be working that night?
> A. Well yes, that was the intent of us being there.
> Q. Was that the intent of your taking the material?
> A. Yes sir.

With respect to the collection of the dues receipts, McLean initially explained that he had taken the receipts so that he could check with the home locals of the M & M employees to ascertain whether they had been forged. However, as noted in footnote 8 above, McLean admitted that he had been aware of the identities of the M & &M employees at the time that his group had entered the warehouse. While he denied that he had confiscated the receipts to emphasize the control which Respondent was thereby exercising over the ability of the M & M employees to work, he ultimately admitted on cross-examination that the procedure which he described for ascertaining if the dues receipts had been forged would

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[9] Apparently perceiving the effect which these answers had had upon Respondent's defense, Sobier subsequently corrected himself and testified, as had Manning and McLean, that the McLean group had merely been attempting to protect the material and trucks from theft.

not, in fact, disclose whether or not the M & M employees and Lingo possessed forged dues receipts, thereby leaving unanswered the question of why it had been necessary to confiscate them. Furthermore, it is undisputed that when McLean later contacted Delmar Jackson, the business manager and financial secretary of Local 305 in Fort Wayne, the local of which Lingo, Klink, Holder and Hatfield were members, he had inquired only if those four individuals were members in good standing. At no point during this conversation did McLean conduct any discussion about the dues receipts that he had collected or the substance of what was written on them, thereby further demonstrating that it had not been necessary to have them in his possession in order to conduct an investigation of whether they had been forged.[10]

Scrutiny of Respondent's defense of longstanding suspicion of contract and hiring hall violations discloses several inconsistencies. First, McLean testified that in June he had begun to receive reports from employees concerning performance of work "on the side" and that as these reports continued through the summer, he became concerned as to whether overtime was being distributed properly. Yet, while he admitted that he checks such information when received from people on the job, he was initially unable to recall, when asked on cross-examination, if he had ever

[10] The conversation with Jackson is significant in several other respects, for McLean did not deny having told Jackson that Hatfield had not proffered a paid-up dues receipt; that Lingo and Holder had done "lousy workmanship" on a job in Fox, but that he did not want them to correct that work and only wanted them out of Alaska or he would ship them out; that he did not intend to file intraunion charges against the M & M personnel since "I want you to get their a____s out of my State, I don't want them up here"; and that he did not intend to file charges against M & M because while Morrelli was a "crook," Monson was a friend of his and a former lineman. In a later conversation with Jackson, McLean repeated that he did not want the alleged discriminatees back in Alaska.

examined the regular reports filed by M & M which reflected hours worked by employees. Ultimately, he equivocated on this subject by testifying that he had "probably" checked those reports but that, in any event, they would not have disclosed a disparity in overtime assignments. Moreover, McLean identified but two employees as the source of reports concerning suspicion of overtime and only one of those employees, Amos Sobier, appeared as a witness.[11] While Sobier did corroborate McLean regarding reports of possible overtime violations, it is significant that, notwithstanding Sobier's status as steward at M & M and the magnitude of the conduct which he contended that he suspected, Sobier never once made any effort to speak with any of Respondent's owners concerning overtime assignments or the possibility of work being performed after hours.

Similarly, McLean did not speak with Morrelli regarding the employee reports that tools were disappearing from

[11] Though not mentioned by McLean, a second witness, Manning, testified that following his commencement of work for M & M on August 18, he had noticed that tools were loaded on trucks at the end of the working day, rather than being locked in the gang boxes that were located at the site where he was working. He testified that after this had happened on consecutive nights, he had become suspicious that the tools were being used for night work and had reported his suspicions to McLean. However, on cross-examination, Manning was pressed for specificity as to the types of tools that he had assertedly seen being loaded on the trucks and was able to identify only a ½-inch hand drill motor, extension cords and, on a couple of nights, a thinwall pipe or conduit bender as being the tools which he had observed being loaded at the end of working days. When pressed further, Manning acknowledged that he owned a hand drill and extension cords and that he used these items to perform work around his own house. Manning identified Greenland as being the person whom he had observed loading these tools and Greenland, as discussed *infra*, performed odd jobs around the complex where he lived. In view of these facts and inasmuch as Manning displayed an obvious interest in the success of Respondent in litigation of this matter, I do not credit his uncorroborated testimony concerning his purported suspicions and report to McLean.

the site overnight and that accordingly those employees assertedly suspected that work was being performed at night. McLean did testify that the Monson brothers had, themselves, made similar reports to him: "I was talking with the Monson brothers, Tom and Gerry, sometimes together and many times separate, they informed me that they thought there was a problem." Thus, testified McLean, upon hearing the initial employee reports, ". . . I informed the Monson brothers that I was getting reports that there was something wrong—and they agreed with me they thought there was something wrong but they didn't know where or what was going on—but they were interested in finding out." McLean also testified that his conversations with the Monsons concerning the matter had begun to occur as early as June. However, only one of the Monson brothers, Jerry,[12] was called by Respondent as a witness and he made no mention of conversations with McLean concerning clandestine overtime work prior to August. In fact, Jerry Monson had not been residing in Fairbanks prior to at least August 10 and he testified that prior to August 10, he had not been familiar with the jobs in which M & M had been engaged in Fairbanks; that his main contact with M & M's operations in that area prior to August 10 had been as a result of telephone conversations with his brother.

Monson did testify that shortly after August 10, he and his brother had discussed with McLean the possibility of night work being performed, but he also testified that during that conversation he had promised to give McLean a list of jobs for which M & M had contracts. This is significant, for Monson acknowledged that among the jobs for which M & M had contracts was the Walsh job and a second job at Fox, a small community approximately 11 miles north of Fair-

[12] In referring to Jerry Monson, McLean's testimony was similar in nature to the comments which he had made to Jackson during their initial telephone conversation: ". . . we're friends, we've been friends for years . . . ."

banks. In fact, Monson testified that during the week which had culminated in the incident at the Walsh warehouse, he had received complaints about the work performed at Fox. Yet, in an apparent effort to embellish Respondent's defense, McLean listed both of these jobs as being ones about which Monson had expressed little knowledge and had harbored suspicions. Thus, McLean testified that on August 20, he had had a conversation with Jerry Monson during which the following comments were purportedly made:

> That conversation was about his material disappearing, his truck being used, tools being used on jobs which we'd talked about before—and he indicated to me that there was a job that had been done at Fox, that he had just picked up little bits of information, he didn't know much about it but he thought I should go and look at it.

At another point, McLean testified to but a single conversation with Jerry Monson on August 20: ". . . this was a meeting Wednesday night when I was talking to Gerry when he indicated to me that he thought there was a little hanky-panky going on with Walsh Construction on Van Horn Road behind the Van Horn Lodge."

McLean testified that on Thursday, August 21, he had made trips to both sites, although he did not testify precisely how he had been able to ascertain the location in the Fox area of the job which Monson had assertedly mentioned the prior day.[13] He ascertained from the personnel of other

[13] Though the magnitude and degree is disputed, the fact is that the work done at Fox had been substandard, as best illustrated by the fact that during the following week M & M attempted to extend Lingo's termination date in an effort to have him correct the work. Then, Morrelli told Lingo that Respondent objected to this and the corrective work was assigned to Godbey and Sobier, apparently to be performed at Morrelli's expense. It is also clear that this was one of the projects encompassed by Lingo's comparative cost arrangement with Morrelli (see footnote 3, *supra*), although Lingo testified that the work had been performed during the daytime. Finally, Lingo acknowledged that his son, Ralph, had worked on the project

employers, employed on the site, that M & M had done the electrical work, but made no effort at this point to ascertain the identities of the employees who had done that work. Instead, he testified that he then returned to Respondent's hall where, after describing the caliber of the work he had seen, he returned with others, one of whom had a camera. The pictures purportedly taken that day did not turn out and though the camera assertedly had been a Polaroid and while McLean claimed to have returned to Fox "several days in a row every day," he apparently made no effort to obtain additional pictures of the work until the following Monday, the day on which the alleged discriminatees were terminated. McLean did, however, testify to having made efforts to ascertain the identities of the employees who had performed the work on these subsequent visits and while initially told only that the employees were "Al," "Redbeard," "the Kid" and "Wino," he assertedly learned more "[e] very time we went over there . . ." and claimed that ultimately, he was able to affix the identity of these four persons as Lingo, Hill, Lingo's son Ralph and Greenland respectively.

McLean also testified that on Thursday evening he had journeyed to the Van Horn Lodge from where he observed an M & M truck parked behind a pile of dirt outside of the warehouse.[14] Based upon the fact that doors on the truck were open and on experience assertedly showing that electricians did not work alone, McLean claimed that he "knew" that electricians were working in the warehouse, but was afraid to enter because ". . . I knew I was about to catch some people in the act of violating our agreement, and especially since one of the characters concerned might have

without having been cleared by Respondent and, while he claimed to lack knowledge as to whether this was improper in Respondent's jurisdiction, Lingo admitted that it was improper in Local 305's jurisdiction.

[14] On cross-examination McLean admitted that the truck could be seen from the road.

been in there working. . ." [15] Consequently, McLean testified that he went to Fairbanks to assemble personnel as "witnesses" and then returned to the Lodge, by which time the truck was gone, although inspection of the warehouse disclosed that boxes had been nailed in the studding and three or four thinwalls for outlets had been installed along the wall. As was true of other facets of McLean's testimony, this aspect also went uncorroborated and, in fact, was contradicted. Thus, McLean testified that Johnson had been among the group of employees who had returned with him to the warehouse on Thursday night. However, Johnson asserted unequivocally that he had neither been at the Lodge nor with McLean on Thusday night. In fact, of the witnesses called by Respondent, only Manning testified that he had gone to the warehouse with McLean on August 21. Yet, McLean did not list Manning as being among those who had been with him that evening, possibly because Manning's description of what had occurred lacked much of the color and flavor which McLean had supplied: "All we did was pull in the Van Horn Lounge and look around and pull out." Manning denied specifically that there had been any discussion that evening about a job that might be going on behind the Lodge.

As is evident from the description of the incident in the warehouse, McLean returned to the site on August 22. He testified that he had earlier arranged to have the site staked out by the owner of a motor home and that when he left M & M, after appointing additional stewards, he went directly to the Lodge, followed by Manning. Seeking to obtain more "witnesses," McLean testified that he requested Manning to remain at the Lodge and drove to Fairbanks, where he stopped both at the Northwood Lounge, finding nobody, and at his home, where he found Godbey and Sobier, both of whom agreed to go to the Lodge. McLean then went to the office of Julius Kornfiend, assistant man-

[15] McLean testified that this reference was to Lingo.

ager for NECA in Fairbanks,[16] where, he testified, he explained that he intended to attempt to catch a "select little crew that Morrelli had" working behind the Van Horn Lodge and invited Kornfiend to attend, but the latter declined. Returning to the Lodge, McLean testified that two M & M trucks subsequently pulled in at the warehouse and, after allowing a sufficient interval for work to commence, he then led his men from the Lodge, cautioning them not to engage in any violence since he merely wanted to catch the workers and then talk to Morrelli and Kornfiend about the matter. However, testified McLean, as his group approached the warehouse, Greenland was observed, Godbey began to run, then ". . . the whole pack started running," and "So I run with them. . . ." Thus, the warehouse was invaded that night.

Though McLean's account was cast in a manner to make it appear that he had laid a carefully formulated trap designed to ensnare wrongdoers, Respondent's other witnesses, though attempting to corroborate McLean, gave accounts which undermined the reliability of that recited by McLean. Thus, Manning testified that after leaving the M & M facility that afternoon, he stopped at the Lodge to join McLean for drinks and that after one or two rounds, he (Manning) left the Lodge to go home and advise his sons that he would be busy that evening—not, however, because of anything in connection with the Walsh project, but rather because he intended to return to the Lodge to continue an evening of conversation and drinking with McLean. Manning specifically denied that McLean had made any mention to him of any job being performed illegally prior to the time that Manning had left the Lodge to speak with his sons. Manning further testified that following his return to the Lodge, it was

[16] Kornfiend had become a member of International Brotherhood of Electrical Workers in 1949 and had served as Respondent's business agent in Fairbanks for 15 years prior to accepting a position with NECA in September 1974.

approximately 45 minutes to an hour before the McLean group left for what Manning characterized as a "little party." [17] Sobier acknowledged that he and Godbey had been asked to go to the Lodge by McLean, but he testified that this request had been made during a telephone conversation, contrary to McLean's testimony that the request had been made in a face-to-face conversation in the latter's home. Moreover, though McLean made no mention of having gone to Respondent's hall that evening, Johnson testified that while at the hall, he had encountered McLean, who had said that he believed that a shabby deal existed and had invited Johnson to go to the Lodge. Johnson placed this conversation as occurring at approximately 5 p.m. that afternoon. Yet, it is more than apparent that at that time McLean would either have been at the Lodge with Manning or on his way to the Lodge from his meeting with the M & M employees. Finally, while Kornfiend did corroborate McLean's testimony regarding a conversation in the former's office that evening, in describing the conversation, Kornfiend made no mention of McLean's having discussed the Walsh site. Rather, he testified that McLean had asked if M & M was performing "shift work" [18] and had said that ". . . he had reason to think that somebody was working on a job out at Fox after hours and he was going to go out, take a look and see if they were."

As further support for its defense of suspicion of conspiracy to abrogate its hiring hall regulations, Respondent points to several other factors, although not asserting that

[17] Manning conceded that he had previously attended a couple of "little parties" in his home local in Detroit, although he denied ever having previously attended one thrown in Respondent's jurisdiction.

[18] M & M had switched to a single shift prior to the incident on August 22. However, service work, i.e., "trouble calls" not pertaining to a normally assigned job which normally comes in on rather short notice, continued to be performed by Respondent after normal hours.

McLean was fully cognizant of their existence at the time that he led his group into the warehouse. Thus, it is clear that Lingo, Klink, Holder and Hatfield were all members of Local 305 and that Hill, while not a member, had worked in the jurisdiction of that local union for 10 or 11 years prior to coming to Alaska. Moreover, the four members of Local 305 had been acquainted with each other prior to their arrival in Alaska and, in fact, the three employees had contacted Lingo before leaving for Alaska. Similarly, Hill had known Lingo, though not apparently the three employee-members of Local 305, before coming to Alaska and had contacted Lingo's wife before journeying north. Further, upon arriving in Alaska together during the week prior to the incident, Holder and Hatfield had contacted Lingo, who supplied them not only with transportation around the Fairbanks area, but who also obtained part-time work for them with M & M, building shelves at one of M & M's projects after first clearing with the carpenters working there.[19]

[19] Lingo, Holder and Hatfield each denied that the latter two had performed any work for M & M other than this part-time carpentry work, which Respondent does not contend was improper. Moreover, the two employees testified that they had spent no more than 6 hours on this task, allocated over two or three afternoons, and testified that this work was a trade for living arrangements. Morrelli, upon receiving the General Counsel's subpoena, went "on vacation" to an unknown location and, accordingly, was unavailable to explain the M & M documents prepared during the time that he had been in day-to-day control of M & M's operations and which Respondent had subpoenaed. Among the documents produced was a packet containing a bill for $400, prepared by Lingo, and listing hours worked by Holder and Hatfield on August 14, 15, 16 and 19, before they were dispatched to M & M, at "hangers" as the basis for Lingo's claim to $900 "out of pocket." The packet also contained a timecard for Holder and one for Hatfield, showing hours for the four dates in August which corresponded precisely with those listed on Lingo's bill. However, the timecards contained at least three different types of handwriting, two in pencil and one in blue pen, and, additionally, part of the cards consist of what appears to have been portions of other timecards taped onto the cards in the packet. A fourth document is a carbon copy of a payroll check made out to Lingo in the amount of $600 and listing in that portion of the form which appears below the check portion: "Reimbursement for Monies paid to terminated electricans [sic] for worke [sic] performed. [Hangers-Walsh Construction.]" Both Hatfield and Holder testified that they had never seen any of these documents. Lingo denied ever having seen the documents other than the bill and testified that the $600 check which he had received did not possess the lower portion which is part of the carbon copy and on which the above-quoted words appear. He did, however, acknowledged authorship of the bill and testified that he had prepared it at Morrelli's direction so that the latter would have something to cover his (Morrelli's) expenditure of $900 for his secretary's automobile. Lingo admitted that this had been a false claim, but testified that this had not been an abnormal occurrence with Morrelli, who, Lingo asserted, was prone to adjusting the records to conform to operations that he was conducting. In this regard, it should be noted that a firm did exist by the name of Morrelli and Associates, although the nature of its operations appears only to have been known to Morrelli.

Finally, by August 22, all six alleged discriminatees were living in a complex at One-Half Mile Lawrence Road, North Pole, at which Morrelli and his family resided. This arrangement came about in the following manner. The complex consists of three facilities: a two-story house, an adjoining apartment and a trailer-home. In the spring Morrelli wanted to move his family into the house, on which work had to be completed. He, therefore, offered to permit Lingo to live rent-free in the apartment for a period of time if the latter would perform the repairs to the house. Lingo, in turn, contacted Greenland, whom he had met while both had been living at the Frontier Lodge, and offered to permit Greenland to live in the apartment, which had two bedrooms, if Greenland would help with the repairs. Greenland accepted and when Hill then moved to Alaska, he assisted in maintaining repair of the house, in return for which he was permitted to move into the apartment. Then, when Holder and Hatfield arrived, Lingo offered to let them move into the trailer-home, until they located suitable accommodations, if they would construct the shelves. Though they did do the work, on the first night that they moved into the trailer-home, Morrelli, apparently inebriated, ejected them. Later, Lingo agreed that Holder and

Hatfield, as well as Klink, could all move into the trailer-home in return for $600 per month rent.

The final element to Respondent's pre-incident factors, offered to support its defense, involves the manner in which Holder, Hatfield and Klink were dispatched to M & M on August 21. On August 20, Morrelli had telephoned McLean and had requested that Klink be dispatched. McLean replied that this could not be done as Klink was at or near the bottom of the dispatch list. Then, on the following day, Morrelli called to order five men on a 40-hour, 30-day dispatch, the least desirable type of dispatch since by accepting such work, an employee relinquishes his place on the dispatch list for only relatively short-term employment. While McLean attempted to persuade Morrelli to change his request to one which would not force those who accepted to lose their status on the list, Morrelli was adamant and insisted that the call be made as he ordered. As McLean had suspected, when he began to go down the names on the list, person after person "rolled" the call. Ultimately, Holder, then Hatfield, then Joe Crumpacker and Tom Stuart,[20]

[20] Notwithstanding the terms of their dispatch, both Stuart and Crumpacker, the former a member of a Dallas local of the International Brotherhood of Electrical Workers and the latter a member of a Fort Worth local of that same labor organization, worked substantially longer than 30 days for M & M without, so far as the record discloses, any request ever being made for Respondent to waive any objections to their continued employment. Stuart testified that when Morrelli had asked him to continue working, the latter had said that the reason was that he had had to remove over half of his manpower and that the situation had changed so drastically that he needed the two Texas men to finish the jobs. While Stuart impressed me as attempting to accurately relate events as they had occurred, Crumpacker appeared more concerned with tailoring his testimony to favor the defense advanced by Respondent in this matter. This is best illustrated by comparing the testimony of these two men with respect to two events.

On Friday, August 22, Stuart described the groups of employees formed at the M & M trailer-office after work as follows: "They [the alleged discriminatees] were all friends from before so they were together and the other members of M & M Electric they was working together so they were together, and myself and Crumpacker we were new hands, we were outsiders more or less, so we were just kind of in the middle." Crumpacker, however, chose to describe this same incident in a manner designed to suggest clandestine overtones: "When we returned to the trailer that afternoon the rest of the crew was in the trailer and they were all happy to see each other, talking over old times I suppose, when Tom Stuart and I walked into the trailer and it got very quiet like we were contagious."

The second event involved the situation at the trailer-office the following Monday. Stuart described a rifle or shotgun in a truck, partly covered by a coat, and said that Lingo told Crumpacker and he ". . . to take one of the company trucks and get on out on the job, that we weren't involved in this and for us to get out of it." Crumpacker, however, testified that a shotgun was being taken from the truck when he and Stuart arrived and that "Mr. Lingo told Mr. Stuart and myself to get out of there, we had no business there, whatever took place there didn't pertain to us, that it was directed toward Mr. McLean and his goons." I do not credit Crumpacker.

and finally Klink accepted the jobs. McLean testified that the call from the prior day for Klink and the fact that Klink and two other members from Local 305 had accepted the work led him to suspect that Morrelli had deliberately placed an undesirable order in an effort to reach these individuals and, testified McLean, in connecting these matters with the rumors about night work being performed by M & M personnel, he was led to conclude that Holder, Hatfield and Klink were, in fact, accomplices in Morrelli's plan to perform work in contravention of the collective-bargaining agreement and the hiring hall. Yet, had McLean truly harbored this suspicion, it is unlikely that he would have taken the step that he admittedly did take on the following afternoon, for when he went to M & M to appoint stewards, who are responsible for being certain that overtime is distributed equitably,[21] McLean appointed Manning to be one of the stewards—and Klink to be the other.

[21] Article III, subsection 3.27 of the collective-bargaining agreement provides: "Job foreman, with the assistance of the Steward, shall be held responsible for the equal distribution of overtime. However, the job steward or gang steward shall work all overtime when three (3) or more men work overtime on his job."

B. Events of August 23

In view of the fact that the Walsh job had not yet been completed, Klink, Hill, Hatfield and Lingo were dispatched to the site on the following morning to complete the work. No secret was made of this assignment. In fact, Lingo called McLean and requested that Sobier be notified to report for work, since, as steward, the collective-bargaining agreement required his presence. However, Sobier decided not to report, fearing that he was being set up by the M & M crew. On that same morning, McLean received a telephone call from Morrelli, who expressed concern because the newspapers had learned of the incident. When McLean said that he was pleased about that fact, Morrelli responded "as long as you feel that way about it I'll see you in court." McLean then called Tommy Monson and when he had described the conversation with Morrelli, Monson replied "it takes two to go to court and I'm not going."

The M & M crew did complete work at the site at approximately 1 p.m., but as they were packing up to leave, they observed McLean leading a group of men, somewhat smaller than on the previous evening, toward them from the Lodge. A call to the police, on the citizen's band radio in one of the vans, may have been overheard by the McLean group, but, in any event, they held back from approaching the M & M crew until the police arrived. McLean testified that he had gone to the site again in an effort to a ascertain who "Ralph" was and that he had again decided to take men with him "... for my own safety and for witnesses."

C. The terminations

Lingo, Greenland, Hatfield, Klink and Hill reported for work on Monday, August 25, but, with the exception of Greenland who was assigned to make two short runs, none of them were dispatched, although all other M & M employees were dispatched. Later that morning, they were handed severance of employment forms by Morrelli, with "Pressure from Local 1546. Daniel McLean" written on each one as the reason for the discharge.[22]

These terminations were but part of a series of events which occurred that day. McLean's first telephone call to Local 305's Jackson (see footnote 10, *supra*) had been made much earlier that morning; so early, in fact, that Jackson had received it at approximately 8 or 9 a.m. in Fort Wayne. Moreover, during the course of that call, McLean had sought to ascertain if Hatfield, Klink, Hill or Lingo, particularly the latter two, had been "troublemakers," but was told that they had done good work in Local 305's area and that Local 305 had never received any complaint about them from any other area. Later that morning, McLean invited Kornfiend to accompany him to Fox, where a new set of pictures was taken of the electrical work. Though McLean told Kornfiend that M & M had performed this work, he did not mention

[22] Because of personal news which he had received Friday night, Holder had left for Indiana on Saturday morning and Hatfield later brought his termination slip to him. He had, however, told Morrelli on Friday night that he intended to go to Fort Wayne "to get some things squared away," had left his tools in Fairbanks, and had made arrangements with Mrs. Lingo to care for his children when he returned.

There is some confusion regarding whether Greenland was terminated on August 20 and then rehired the next morning. Greenland testified that Morrelli had made a decision to send him north on a job and on August 20 had paid him in full so that he would have sufficient cash once he arrived there. On the following morning, Morrelli said that Greenland was not to go north and directed him to return to work in the Fairbanks area. During examination on the first day of the hearing, Greenland testified that he had gone to see Morrelli on August 20 about termination from the job, but denied asking for a termination on that or any other day and, further, denied ever having mentioned leaving his job on that Wednesday. Recalled on the last day of the hearing, he acknowledged that he had been terminated on Wednesday, August 20. Though Respondent singles this testimony out to assail Greenland for "giving false testimony at the hearing," these answers are really not inconsistent and, to the extent that they could be so construed, appear to have been more the product of confusion than contrivance.

specific names of individuals whom he had been told had performed it.[23]

Aside from the terminations, one other event took place at M & M's trailer that morning.[24] Prior to the discharges Morrelli had received a call from his wife on the citizens' band radio and she had told him that she had just been threatened. Subsequently, Morrelli told Greenland that his wife had received a death threat and later that morning he accused Sobier and Godbey of having threatened his wife, although the matter was dropped when Sobier denied having done so.

That afternoon Jerry Monson and Morrelli met with McLean in Kornfiend's office. McLean testified that this meeting had occurred as a result of a telephone conversation with Morrelli, who had said "you win, I've terminated all the people" and who had told McLean what had been listed on the severance of employment forms as the reason for the terminations. According to McLean, Morrelli then asked if McLean wanted to discuss the matter and the latter had said that he did, but only in Kornfiend's office. At this meeting, testified McLean, Morrelli had adopted an apologetic tone and had said that he felt badly that this had occurred, but that he had been confused and had never read the agreement. When Morrelli mentioned what he had written on the severance of employment forms, McLean testified

[23] Indeed, asked if he had learned the identity of Ralph after August 25, McLean testified: "This was after Monday—it took me several days to find out who Ralph was."

[24] Manning testified that when he had reported for work that morning, Lingo had told him to get out and that he was fired. However, while Manning testified that he then told McLean about the discharge and that McLean had told him simply to report to the project on which Manning had been working, McLean did not corroborate Manning's testimony in this regard. I do not credit Manning's uncorroborated testimony and believe that he simply made up this scenario, as he did his report to McLean regarding tools taken from the site, in an effort to enhance Respondent's defense.

that he had immediately responded that Morrelli knew that was incorrect and that M & M would have NLRB trouble, adding "I never told you to terminate them."[25] Morrelli replied, according to McLean, that this was no problem since he would simply retrieve the forms and, furthermore, asserted that he had only written this on the forms because the alleged discriminatees had "told" him what to write.[26] McLean further testified that Jerry Monson had also said that ". . . those guys had told Morrelli what to put on those termination slips." Finally, McLean testified that during this meeting, Morrelli had said that Greenland had been terminated on Wednesday, August 20, that "I didn't make him a termination slip, I made one for the rest of the guys," and that Morrelli had acknowledged the probable correctness of McLean's assertion that Greenland had been on the job illegally on Thursday, August 21, and Friday, August 22. However, McLean's description of this meeting, like so many other facets of his testimony, was utterly lacking in corroboration and, in fact, was contradicted in significant respects, though all who testified were clearly sympathetic to Respondent.

Most apparent is the fact that, contrary to what McLean testified that Morrelli had said, the fact is that Greenland did receive a severance of employment form, as did the other alleged discriminatees. Of course, it could be that Morrelli had been merely lying to McLean, but there is no apparent reason for him to have done so. On the other hand, McLean would have a very good reason for attributing such a statement to Morrelli, for it supports his testimony that Morrelli had said that Greenland had been terminated the preceding

[25] "I knew right then that there was an NLRB problem . . ." testified McLean.

[26] Subsequently, Morrelli prepared a statement claiming that McLean had been responsible for the terminations. However, Lingo acknowledged that he, in essence, had told Morrelli what he (Lingo) wanted in this statement and that Morrelli had then prepared it. I accord no weight to this particular document.

Wednesday, thereby supporting, in turn, Respondent's position that Greenland could not be considered a discriminatee because he had previously quit.

Of greater significance was Jerry Monson's testimony.[27] First asked to describe this meeting, Monson testified that "It was a general discussion really—McLean had pictures of the Fox job of all the violations on it—or some of the violations, not all of them—and it was just a general conversation regarding the position of the Union and the contractors and how we could work together for more mutual benefit." Asked then if there had been any discussion about why the men had been terminated, Monson testified "Pressure from the Local Union was what was on the termination slips—beyond that there was very little conversation." Asked if Greenland's status had been discussed, Monson testified that there had been a question raised as to whether or not Greenland had been terminated prior to August 22, but was unable to recall who had raised the subject or specifically what had been said in reply by Morrelli during the meeting. Finally, asked whether Morrelli had described how he had decided to list the reason for termination that he had written on the forms, Monson said that he did not recall if Morrelli had explained this at the August 25 meeting or at a subsequent meeting, but that at one of these meetings Morrelli had ". . . said it was more or less what the fellows wanted on there, the fellows that were getting laid off."

The capstone to McLean's testimony regarding this meeting was provided by Kornfiend, who denied that there had been any discussion of the incident at the Walsh site, denied

[27] Monson testified that earlier that morning, when he had gone to the M & M trailer-office, he discovered the alleged discriminatees, with the exception of Greenland, in the trailer and had gone outside where he was engaged in conversation with Greenland when Morrelli led the alleged discriminatees outside and had said to them "this is my partner, I'd like you fellows to look him in the eye and see if you think he's the one that turned us in." He testified that no one replied affirmatively to Morrelli.

that there had been any mention of overtime on that day and testified that he did not recall any discussion about the wording on termination slips, asserting that that would have been a matter of primary interest to him as representative of the contractors. Rather, testified Kornfiend, the discussion had centered on the quality of the work at Fox, with Morrelli saying that the employees involved had been terminated and that the termination slips, of which NECA is to receive a copy, already had been posted in the mail:

> The talk about terminations came up that he had terminated some men—our office receives a copy of these terminations—they come out I believe in four copies, our office receives one, the employee receives one, the office of the Union receives one, and at that time we had not received them and he had told me they were in the mail. This was the only talk we had about terminations.

A subsequent meeting involving McLean, Jerry Monson and Morrelli was conducted in September. This meeting was taped by McLean and all present were aware that their words were being recorded. Without belaboring the matter, a review of the substance of the comments and of the tenor of the conversation discloses that both M & M officials were concerned with protecting their firm's position and that toward that end, they expressed outright willingness to, as Morrelli phrased it during this meeting, ". . . take each one [alleged discriminatee] in succession and I'll nip each one." Consistent with that approach, during the course of the meeting Morrelli, joined to some extent by Monson, admitted that Respondent's accusations were accurate, including that Lingo had caused problems, that Lingo had done terrible work,[28] that Respondent's observation concerning poor workmanship at Fox and Walsh were probably

[28] In this regard, at one point during the meeting McLean states: "Those pictures and that other evidence in that file there will for damn sure convince [indiscernible] to drop those charges."

accurate, that Lingo should not have been trusted, that the alleged discriminatees had formulated the language used to explain the terminations on the severance of employment forms, and that Greenland had been terminated on Wednesday, August 20, after which he had no longer been on M & M's payroll. Yet, Respondent introduced a carbon copy of a payroll check for $265.95, made out to Greenland and dated August 25. But then, as Morrelli promised McLean during the recorded meeting, ". . . I caused a lot of this f..... hassle and I'll do every goddamn thing I can to straighten it out."

V. *Analysis*

Four conclusions emerge in this matter. First, notwithstanding Respondent's protestations that no one was injured on August 22 and that no jury would return a verdict against McLean's group for their conduct, it is manifest that acts of violence were both threatened against and directed against the alleged discriminatees on the evening of August 22 by Respondent and the magnitude of this conduct was serious. Thus, the group led by McLean outnumbered the M & M employees initially cornered in the warehouse by better than 2 to 1, thereby serving to magnify the yelling, cursing and name-calling directed at the four M & M employees.[29] Nor were the McLean group's comments confined to simple name-calling, for a number of threats were made to the effect that the four M & M employees would be killed were they to remain in Alaska, threats which can only have been reinforced by the fact that several of McLean's group had picked up tools upon entering the warehouse. Moreover, the tools were not simply brandished in a menacing fashion. Johnson struck Klink with a hammer

[29] In these circumstances, it hardly means much that, as Respondent pointed out, Greenland had once been a bouncer in a bar. Bouncers are not expected to stop misconduct by groups greater in number.

and with sufficient force to draw blood. Although Johnson denied doing this, I do not credit him. When describing the incident at the hearing, Johnson displayed such strong contempt for the alleged discriminatees that at times he appeared to border on complete loss of self-control as, to some extent, his above-quoted descriptions of the incident disclose. If, almost 5 months after the event and in the neutral atmosphere of a courtroom, Johnson displayed such intensity, it is not hard to conclude that he was fully capable of striking Klink with the hammer in the heat of the moment. Indeed, it was Johnson who subsequently attempted to demonstrate to Greenland how much he would "like to tear your guts out" by trying to force his hand under Greenland's rib cage. Moreover, Johnson displayed a tendency to slant his testimony in Respondent's favor as illustrated by his description of how he had disarmed Klink when the latter appeared ready to do harm to McLean—testimony which was controverted by McLean's description. Nor was the aggressive conduct that evening committed solely by Johnson, for it was McLean, himself, who later aimed and drove his automobile at the M & M employees walking along the Van Horn Road. While Respondent characterizes this incident as a "quick swerve and nothing more," one wonders how innocuous it would have been had one of the M & M employees been too slow in diving into the ditch. Shortly thereafter, McLean then led his group in blocking the camper occupied by the alleged discriminatees, as well as by Lingo's wife and child, on a lonely part of the Van Horn Road. Contrary to Respondent's contention, this conduct can most aptly be characterized as "violent."

Moreover, the events of August 22 were followed on the next day by a second visit to the site by McLean, accompanied by several other men. This time, however, a further repetition of the events of the preceding evening was forestalled by the summoning of the police. In this regard, I do not credit McLean's claim that he had returned to the site in an effort to ascertain the identity of "Ralph." There is

no evidence that he exerted the least effort to learn Ralph's identity while at the Walsh site, nor is there any evidence that he made any other effort that day to obtain that information, though it is clear that he did speak with both Morrelli and Tommy Monson, as well as with Steward Sobier, on that day. Surely were McLean as concerned as he has portrayed himself with respect to Ralph's identity, he would have at least inquired of these individuals about the matter. Therefore, I find that on the evening of August 22, Respondent did engage in acts of violence and threatened violence against the alleged discriminatees and, further, that Respondent, at the very least, gave the impression of an intention to repeat its violent conduct on August 23.

The second conclusion emerging from a review of the evidence is that Respondent's defense of longstanding suspicion of improper work and of efforts to ascertain where it had been occurring is merely a pretext, constructed in an effort to justify its conduct on August 22 and 23. This construction, however, succeeded only in generating a series of inconsistencies. Thus, while McLean claimed that employee reports concerning the possibility of overtime work had been received by him as early as June, only one employee supported him in this respect, and McLean admitted that despite these purported reports, he was uncertain if he had ever taken the quite elementary step of checking M & M's reports reflecting the hours that employees had been working. He also claimed that since June the Monson brothers had expressed suspicion regarding night work, but only one of these brothers, Jerry, was called as a witness by Respondent and, rather than corroborate McLean in this respect, Jerry Monson testified that he had not been familiar with M & M's projects in the Fairbanks area until he had moved there in August. Moreover, contrary to McLean's testimony regarding Jerry Monson's asserted August expressions of suspicion concerning the possibility of work at Fox and on Van Horn Road, it is quite clear that Monson would not have made such statements, since Monson testified that he had become fully aware that M & M had contracts for these projects and, indeed, had received complaints about the caliber of work performed at Fox. In fact, it is a fair conclusion that McLean also had become aware of both the Fox and Walsh projects well before August 21, since shortly after arriving in Fairbanks, Jerry Monson had provided McLean with a list of M & M's projects, which presumably identified both of these sites as locations where M & M was or would be performing work.

McLean's recitation of the events of August 21 further demonstrated the unreliability of his testimony. Thus, he testified that Monson's suspicion of work at Fox had been what had led him to that site. Yet, he failed to explain how he knew where in the Fox area to locate the work in light of the sparse information about it with which he had assertedly been provided by Monson. He claimed to have wanted pictures of the poor workmanship, but admittedly waited until Monday, August 25, to have them taken. He did claim that pictures had been taken on August 21 but had not turned out properly. However, he identified a Polaroid camera as being the type of camera with which the pictures were taken and, accordingly, it would have been immediately apparent that the pictures assertedly taken were defective. Notwithstanding his claim of several trips to Fox after August 21, it was not until the day of the discharges of the alleged discriminatees that he again, under his version, made an effort to have new pictures taken. Given his efforts much earlier that same morning to ascertain from Jackson adverse information regarding the discriminatees, it appears that the pictures were taken on Monday as part of an effort to construct justification for the conduct on August 22 and 23.

McLean journeyed to the Walsh site on August 21, but here again his testimony was such that its unreliability became manifest. On direct examination regarding this trip, he claimed that the M & M truck which he had observed

there had been located behind a dirt pile, thereby conveying the impression of clandestine activity. Not until cross-examination did he acknowledge that, without regard to the truck's location in relation to the dirt pile, it had been visible from the road. On direct examination he also contended that work had been in progress inside the warehouse that evening, but pressed for an explanation of how he could ascertain this by looking through the window of the Van Horn Lodge, he was able only to reply that the doors on the truck had been open and that electricians normally did not work alone. McLean claimed that he then went to town for "witnesses" in view of the fact that he suspected that Lingo was "one of the characters" at work in the warehouse that evening. However, there is no evidence that would support a finding that Lingo's name had come to McLean's attention by the time that he purportedly made this visit to the warehouse. Indeed, McLean admitted that on his first trip to Fox, he had not sought the names of the specific individuals who had worked for M & M at that location and that his subsequent inquiries had initially provided him only with nicknames—nicknames for which only subsequent investigation had yielded corresponding actual names.

Indeed, Respondent's efforts to buttress its defense with a cloak of respectability led only to numerous conflicts among its witnesses as they attempted to construct a coherent pattern of conduct immediately prior to the time that McLean's group entered the warehouse. For example, while McLean included Johnson among the "witnesses" who had returned with him to the Walsh site on August 21, Johnson unequivocally denied being with McLean or at the Walsh site that evening. Manning claimed to have been with McLean at the Walsh site on the evening of August 21, but McLean did not list Manning as being among those who had returned to the warehouse with him that night. McLean testified that upon his return to the warehouse with the "witnesses," he had examined the inside of the warehouse, discovering and identifying the electrical work that had

been performed. Manning, however, testified simply that the group merely pulled in at the site, looked around and pulled out. He made no mention of ever entering the warehouse or of inspecting work performed there. He specifically denied that any discussion had taken place that evening regarding a job in progress behind the Lodge. Nor did the testimonies of these two witnesses correspond concerning the events of the following evening, prior to their dash from the Lodge to the warehouse. Thus, while McLean portrayed his trip to the Lodge as pursuant to a carefully laid trap designed to catch the wrongdoing M & M employees, Manning testified that the evening had begun merely as an end-of-the-week social event, with no initial mention of work being performed illegally. Each testified that he had been the one who had left the Lodge to go to town for a short time. Neither made any mention of the other's departure for a short period following their initial, post-workday arrival at the Lodge. It is clear that at one point McLean did go to town. Whether he went to his home to summon Godbey and Sobier to the Lodge or called them at some other point is disputed. However, he did go to NECA's office to speak with Kornfiend. About what? McLean testified that it was to alert Kornfiend to the planned raid on Morrelli's group at the Walsh warehouse. Kornfiend, however, made no mention of the Walsh site and, instead, testified that, after inquiring about M & M performing "shift work," McLean had said that he intended to check to see whether overtime work was being performed at Fox. Therefore, while there is a degree of consistency regarding the events that occurred prior to McLean's entry into the warehouse on August 22, there is no consistency among Respondent's witnesses concerning the details of these events. Given the disparity and the significance of the events for which corroboration is lacking and for which inconsistency exists, the matter partakes more of a contrived defense than of a simple conflict in perceptions and memories of events.

In an effort to support its defense, Respondent points to

a number of other factors which it contends are relevant to establishing that a conspiracy, as suspected by Respondent, existed among the alleged discriminatees: four of them were members of Local 305 in whose jurisdiction a fifth had worked regularly; four of them had known each other prior to coming to Alaska and a fifth had known Lingo before he had come to Alaska; Lingo had driven two of them around town when they had first arrived in Fairbanks and had obtained temporary carpentry work for them with M & M; and all of them were living in the same complex at the time of the incidents giving rise to this complaint. Yet, a parallel examination of the situation of Respondent's witnesses discloses that Manning and McLean's father had been members of and friends in the same local union in Detroit for a number of years and that Sobier and Godbey had been renting a part of McLean's home at the time of the August incidents. True, both Sobier and Godbey had been paying rent for their living arrangements. However, it is also true that the discriminatees had also provided, or agreed to provide, consideration in return for the quarters furnished them in North Pole. Furthermore, Respondent has not contended that the carpentry work performed by Hatfield and Holder constituted a violation of either the collective-bargaining agreement or Respondent's internal regulations. Of greater significance is the fact that there is no evidence that McLean or any of his "witnesses" had been aware of any of these factors at the time that they entered the warehouse on August 22. Thus, these matters can hardly be relied upon to justify Respondent's conduct that evening.

To similar effect is Respondent's contention concerning the purported suspicion arising from the abnormal terms of the dispatching order placed by Morrelli on August 21 and the acceptance of that work by Holder, Hatfield and Klink. Morrelli's "vacation," of course, precludes inquiry with regard to his reason for making that request. Yet, he apparently meant to observe the terms of that order, for he later asked Stuart and Crumpacker to remain for longer

than 30 days because of inability to complete jobs due to the loss of workers; at least, that was his explanation. Again, however, the significant point is that I do not credit McLean's assertion that the order and the identity of those dispatched led him to suspect their participation in a conspiracy. Aside from my unfavorable impression of McLean, the simple fact is that had he truly felt as he claimed, it is inconceivable that within 24 hours he would have appointed Klink as a steward.

I have no doubt that it was suspicion of misconduct which led McLean and his group to the Walsh site on August 22. His initial comments to Klink and Hatfield that evening leave no doubt of that fact. However, I do not credit Respondent's witnesses, particularly McLean, when they attempted to testify in support of a defense that their suspicions had been longstanding and that their anger was warranted by the difficulty which had been encountered in trying to develop evidence of this misconduct. Rather, I believe that McLean jumped to the conclusion that misconduct was occurring at the Walsh site, decided upon a show of force to remedy it, and then later, confronted with an unfair labor practice charge, attempted to conceal the hastily conceived course of action which he had followed.

That this was, in fact, what had occurred is supported by the third conclusion emerging from these facts: that the evidence will not support Respondent's argument that the alleged discriminatees were performing work improperly on August 22. In broaching this point, one matter is paramount—Respondent's collective-bargaining agreement does not prohibit overtime. It simply requires that overtime be distributed equally. Moreover, in doing so, it makes the steward, in part, responsible for ensuring equitable distribution and requires that the steward be assigned to work overtime when three or more men work overtime. Here, these is no evidence that M & M was distributing overtime unequally. Yet, the reports filed by M & M and reflecting

the hours worked by employees could have been produced by Respondent if, in fact, they showed an inequity. Moreover, while Lingo and Morrelli could have called Respondent's hall when it became apparent on August 22 that overtime work would be necessary, there is no requirement that they do so. The only implicit requirement in article III, subsection 3.27 is that an employer notify a steward of the overtime—and Klink was notified and did work that evening. Furthermore, on the following morning, Respondent, perceiving that Klink was no longer to be considered a steward, did notify Sobier, through McLean, that work was to be performed at the Walsh site. This also shows that no effort was being made to perform work at the Walsh site secretly. True, the terms under which Klink, Holder and Hatfield were dispatched provided that they were to work only 40 hours a week and the work which they were performing was overtime work. On the other hand, it appears that service work is overtime work and that service work is an expected facet of electricians' work. Moreover, that the terms under which dispatches are made are somewhat flexible is illustrated by the retention of Stuart and Crumpacker for more than a 30-day period without, so far as the record discloses, clearing the matter with Respondent, even though these two employees, like Klink, Holder and Hatfield, had been dispatched for only a 30-day period. In short, Morrelli had been advised on short notice that work at the Walsh site had to be completed, those employees who were available were selected, and a steward was among the employees who worked that night. Therefore, I find that the evidence does not support Respondent's assertion that the work being performed at the Walsh site on the evening of August 22 was illegal and improper.

The final conclusion emerging in this case is that the terminations of Lingo, Greenland, Hill, Holder, Hatfield and Klink were intended by Respondent and resulted directly from Respondent's conduct. While Respondent contends that the terminations were no more than an added

facet of a conspiracy among the discriminatees, Respondent's intent to cause a severance of the discriminatees' employment with M & M is demonstrated by the McLean group's demands on Friday that the alleged discriminatees leave the State. A similar demand was made by McLean during his conversation with Jackson early Monday morning and was reinforced when McLean later told Jackson that he wanted the men kept out of Alaska. Quite obviously, the discriminatees could not continue employment with M & M from another state. Moreover, Respondent took various actions to support those demands. On Friday night, threatening words and conduct accompanied these demands, and these threats were then repeated to Jackson on Monday. McLean collected the dues receipts and, although he contended that this had been done to ascertain if they had been forged, his ultimate admission that collection of the receipts would not really achieve that objective and his further admission that he had been aware of the identities of the M & M personnel when his group had entered the warehouse demonstrate the transparency of his asserted reason for collecting the dues receipts. Indeed, Manning's retort to Holder's demand that his card be returned ("you're not going to need it anyway"), made while McLean's group was blocking Lingo's camper, makes clear that the true purpose for collecting the dues receipts was to prevent the M & M group from continuing to work in Alaska and to reinforce the earlier demand that they leave the State. Similarly, on the following day McLean again led a group to the Walsh site. This time there was no repetition of the events of the preceding evening. Whether that occurred because the M & M group had been heard summoning the police or because McLean had never intended a repetition, but had intended only to "show the flag," is not clear. What is clear, however, is that McLean's asserted purpose for going to the Lodge on Saturday, to attempt to ascertain the identity of Ralph, was not the real reason for his presence. There is no evidence that McLean made any inquiries about

Ralph while at the site and, more significantly, though he admittedly spoke with both Morrelli and Tommy Monson, as well as Sobier, on that Saturday, he made no apparent effort to ascertain the identity of Ralph.

It is, of course, true that there is no direct evidence of any request by Respondent that M & M discharge the six alleged discriminatees. However, Respondent's conduct of August 22 and 23 clearly was intended to send a message to M & M concerning the continued employment of these six men. Thus, Respondent was undoubtedly aware that Morrelli would become aware of what had taken place on Friday night at the warehouse, as in fact he did. Moreover, despite the assertion, supported only in part by the testimonies of Respondent's witnesses, that the trucks had been removed from the Walsh site for protection, the fact that they were taken to NECA, rather than to M & M's office-trailer, shows, as Manning admitted at one point on cross-examination, that Respondent's intention was to impress upon M & M the fact that no further work was to be performed by these men. This point can only have been renewed by the fact that when some of the alleged discriminatees returned to work at the same site on Saturday, McLean again led a contingent of "witnesses" to that location. Nor can the threat to Morrelli's wife be overlooked. While there is no evidence that Respondent was the source of that threat, it is clear that from whatever she told her husband about it, he construed it as originating with Respondent, as illustrated by the accusation which he subsequently leveled at Sobier and Godbey in connection with the matter. Indeed, given Respondent's demonstration of a penchant for threats, it would not be illogical for Morrelli to have connected the threat against his wife with the recent threats of Respondent.

The circumstances of the discharge also demonstrate that Morrelli was merely accepting the inevitable and pursuing the course which Respondent wanted M & M to follow. This

he made clear by what he wrote on the severance of employment forms. Respondent, however, argues that it was the discriminatees who told Morrelli what to write on the forms and, indeed, both Morrelli and Monson made statements to that effect during their meeting with McLean in September. However, this meeting was being taped. All present knew that. A review of the tape and the transcript prepared from the tape discloses that both Morrelli and Monson were endeavoring to assist Respondent in disposing of the unfair labor practice charge filed by, at that point, Greenland—a logical procedure in light of the need to restore M & M to Respondent's good graces. Consequently, I accord no weight to the statements by Morrelli and Monson that the discriminatees were the ones who told Morrelli what to write on the termination slips. Moreover, even if that were the case, there is no denial of the truth of those statements and it hardly diminishes their impact to say that the discriminatees insisted that the true reason for their terminations be recited on their severance of employment forms. Further, that the terminations were the result of Respondent's conduct is shown by Morrelli's comment to McLean during their telephone conversation of that date "you win, I've terminated all the people." Though McLean testified that it was this comment that led to the meeting in Kornfiend's office, Kornfiend did not corroborate McLean's testimony that these terminations had been discussed during that meeting, and Jerry Monson's corroborative testimony was extracted by painfully prolonged questioning which served to demonstrate only that Monson was trying to help his friend McLean.[30] What this shows is that McLean was

[30] Similarly, I do not credit Monson's testimony that on the morning of August 25, Morrelli led the discriminatees to Monson and told them to look Monson in the eye and indicate if they thought that Monson had been the one who had "squealed on us." Aside from Monson's friendship with McLean and obvious desire to be helpful to Respondent, such conduct by Morrelli simply does not make any sense and, in the circumstances, is inherently implausible.

satisfied that the terminations had occurred. This satisfaction ceased only when he later learned that the true reason for the terminations had been recited on the severance of employment forms. At that point he began to attempt to cover his tracks in an effort to prevent issuance of a remedial order by the Board.

Therefore, I find that the object of Respondent's conduct was to secure the termination of the discriminatees' employment with M & M and that it was that conduct which, in fact, occasioned the terminations of August 25.

These four conclusions—that violence was undertaken by Respondent; that Respondent failed to establish that its conduct had resulted from ultimate discovery of misconduct long suspected but not previously provable; that the evidence is not sufficient to show that the M & M personnel were acting improperly by working during the evening on August 22; and that Respondent intended the employment of the six discriminatees with M & M to be terminated and that the terminations did result from Respondent's violent conduct—provide the basis for analyzing the legal principles pertinent to this case.

Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a labor organization to restrain or coerce employees in the exercise of their rights, *inter alia*, to engage or to refrain from engaging in concerted activities for mutual aid or protection. Section 8(b)(2) of the Act makes it an unfair labor practice for a labor organization, *inter alia*, to cause or attempt to cause an employer to discriminate in regard to employment to encourage or discourage membership in a labor organization. Though a literal reading of Section 8(b)(2) would render unlawful any action by a labor organization impinging upon the employment relationship as such action would have the natural effect of encouraging or discouraging membership, that section of the Act has not been construed literally. See *Radio Officers' Union of CTU, AFL (A. H. Bull Steamship Company)* v. *N.L.R.B.*, 347 U.S. 17, 41-42 (1954). Only where a labor organization's conduct, which impinges upon the employment relationship, is motivated by intent to discriminate to encourage or discourage membership or where that labor organization's actions are arbitrary, invidious or irrelevant to union interests is Section 8(b)(2) violated. See *Ashley, Hickham-Uhr Co., et al.*, 210 NLRB 32, 33; *Philadelphia Typographical Union No. 2 (Triangle Publications, Inc.)*, 189 NLRB 829, 829-830. Consequently, in the instant case, had Respondent merely requested the discharge of the discriminatees for contractual violations committed, this matter would be governed by entirely different principles. See *Los Angeles Paper Handlers' Union No. 3 (Gravure West)*, 181 NLRB 417, 419-420; *Columbus Typographical Union No. 5 (The Dispatch Printing Company)*, 177 NLRB 855, 856, affd. 437 F.2d 454 (C.A. 6, 1971).

Instead, though requested by Klink to resolve the matter through internal union procedures and though asked by Hatfield to have the matter resolved by contacting M & M, McLean rejected any peaceful procedures for settling the dispute and opted for a show of force, thereby supplanting M & M's right to control work assignments and to select personnel for employment and, also, supplanting the grievance procedure which the parties had chosen in their collective-bargaining agreement as the means for resolving disputes peacefully. It is this very type of violent conduct which the Board has condemned—repeatedly and for quite some time. *Abe Meltzer, Inc.*, 108 NLRB 1506, 1508-1509, enf. denied 224 F.2d 78 (C.A. 2, 1955); *Teamsters Local 729 (Penntruck Co., Inc.)*, 189 NLRB 696, 698-699; *Brewers Local 6 (Custom Packaging Corporation)*, 192 NLRB 1263, footnote 2.

In its brief Respondent points to the decision of the United States Court of Appeals for the Second Circuit, refusing to enforce the *Meltzer* decision. However, largely in view of the legislative history showing Congress' concern with preventing violence, the Board has adhered to its

original position in that case, *Teamsters Local 729, supra,* and I am bound by the Board's decision in that regard. Moreover, in *Meltzer,* the court pointed out that the cornerstone of its reason for refusing to enforce the Board's order was the collective-bargaining agreement: ". . . employees have no protected right under Section 7 to violate the valid provisions of a collective bargaining agreement [p. 80]." In the instant case, as found above, there has been no showing that the discriminatees did violate the overtime provisions of Respondent's collective-bargaining agreement with NECA—no evidence that overtime work had not been distributed equally or that M & M had failed to assign a steward to the Walsh site because more than two workers had been assigned overtime work there. Nor, in reality, has there been a showing that Klink, Holder and Hatfield violated the terms of their dispatch as it appears to have been applied—an unexpected need arose to have work performed, that work appears to qualify as "service work," which is the type of work arising on short notice and usually performed after normal hours, and the terms of dispatches appeared to be subject to some degree of flexibility, as illustrated by the retention of Stuart and Crumpacker for more than 30 days, notwithstanding the initial restriction of their dispatch to 30 days. Consequently, this case is not governed by the court's decision in *Meltzer,* but is purely a case where Respondent took it upon itself to decide that the men should not be working and then embarked upon a course of violent conduct designed to impose that policy upon the six discriminatees and upon M & M. In so doing, Respondent violated the discriminatees' right to refrain from promotion of that policy and engaged in conduct which undermined the integrity of the agreed-upon peaceful method for resolving disputes and which also undermined the overall statutory objective, as set forth in Section 1(b) of the Act, of avoiding or substantially minimizing "[i]ndustrial strife which interferes with the normal flow of commerce and the full production of articles and commodities for commerce."

Therefore, I find that Respondent violated Section 8(b)(1)(A) of the Act on August 22 by threatening employees with physical harm, threatening to kill employees, assaulting employees, confiscating employees' dues receipts, confiscating the trucks and tools of M & M which had the result of forcing its personnel to walk to Fairbanks, and creating the impression of attempting to run over and hit these employees with an automobile as they walked along the Van Horn Road toward Fairbanks. I further find that on the following day, Respondent returned to that same site either with the object of repeating its conduct of the night before or with the object of creating the impression that such conduct might be renewed. Finally, I find that this conduct was undertaken with the objective of causing the termination of the six discriminatees and that, in fact, M & M did terminate these individuals because of Respondent's conduct.

Respondent, however, raises a series of defenses which go beyond the facts underlying the violations of the Act. Thus, it contends that M & M and NECA are indispensable parties to this proceeding and that the failure to join them as respondents merits dismissal of the complaint. However, it is settled that ". . . the absence of joinder of the employer . . ." does not preclude entry of a remedial order against a labor organization. *Radio Officers' Union, supra,* at 54. Similarly, while Respondent contends that the discriminatees are not entitled to relief because they failed to exhaust remedies assertedly available to them through the administrative hiring hall appeal procedure or through the grievance procedure in the collective-bargaining agreement, it is also settled that such procedures may not be relied upon to preclude parties from access to the Board's processes: ". . . the overriding public interest makes unimpeded access to the Board the only healthy alternative, except and unless plainly internal affairs of the union are involved." *N.L.R.B.* v. *Industrial Union of Marine & Ship Workers,* 391 U.S. 418, 424, 88 S.Ct. 1717, 1722 (1968).

Respondent further argues that Greenland should not be

found to have been terminated on August 25, because his employment with M & M had been terminated on Wednesday of the preceding week. This contention is based upon information provided to McLean by Morrelli during the taped September meeting in which M & M's officials were attempting to aid Respondent "nip each" discriminatee. In view of the purpose of this meeting, I am according no weight to statements adverse to the interests of the discriminatees made during the course of that meeting. In fact, Greenland testified that he had been terminated on August 20, but that this had been done so that he could go north on another job for Morrelli. On the following morning Morrelli reversed direction, said that he no longer intended to send Greenland north and instructed Greenland to return to work. Respondent has not shown that this procedure violated either the collective-bargaining agreement or the procedures for operation of the hiring hall. When terminated on August 25, Greenland was given both a check and a severance of employment form. Accordingly, it is clear that Greenland continued working for M & M after August 20, that he was compensated by M & M for that work, and that he was terminated August 25. In these circumstances, I find Respondent's argument concerning Greenland to be without merit. Similarly, though Holder left Alaska, it is clear that he had made arrangements to return to continue working. That he did not do so can only be attributed to his termination. Absent that termination, he would simply have been absent from work for a few days, so far as the record shows.

Respondent's primary arguments are devoted to the overall contention that the discriminatees had been involved in a conspiracy to violate the collective-bargaining agreement and that, consequently, no violation should be found or that, in any event, no remedial relief should be granted which would provide any benefit to these "conspirators." At the outset, one point should be made most clear: even were I to find that the discriminatees had engaged in the misconduct attributed to them by Respondent, I would still

find a violation in this case. "A proceeding by the Board is not to adjudicate private rights but to effectuate a public policy." *Industrial Union of Marine & Ship Workers, supra,* 391 U.S. at 424, 88 S.Ct. at 1721. Thus, even if the discriminatees had committed acts which were wrongful under the collective-bargaining agreement, that does not excuse Respondent's quite clearly unlawful conduct in violation of the Act. Moreover, as found above, there is no evidence sufficient to find that the M & M personnel were acting improperly when they worked in the Walsh warehouse on the evening of August 22. Finally, as also found above, while Respondent's witnesses made every effort to construct a plausible story to support the overall defense that there had been a longstanding suspicion of work being improperly performed, their demeanor, confirmed by the inconsistencies among those witnesses and the unreality of the substance of portions of their testimonies, convinces me that the entire sequence of events prior to the August 22 incident, as related by those witnesses, was completely fabricated and utterly untrustworthy.

This is not, however, to be construed as placing angelic wings on the discriminatees. Rather, it merely means that the rumors, suspicions, etc., which Respondent's witnesses claimed to have experienced prior to the evening of August 22 were, by and large, simply not credibly shown to have occurred. Following the August 22 incident, however, McLean set upon a search for reasons to "nip each" discriminatee—a search which continued right into the room during the hearing in this matter. As a result, some items were disclosed which were anything but favorable to several of the discriminatees. Thus, Lingo, Hill and possibly Greenland did perform shabby work at Fox, although it is unlikely that Respondent would have sought their terminations under ordinary circumstances because of this, but would probably have merely sought to have them correct the poor workmanship on their own time, consistent with the normal procedure in such circumstances. Moreover, Greenland may

have performed duties other than those of a material handler at Fox and it is crystal clear that Lingo permitted his son to work there, even though the latter had not been cleared through Respondent's hall. This was quite clearly improper conduct which undermined the purpose of a hiring hall and to the extent that Hill and Greenland knew of this, they also acted improperly in continuing to work without reporting it. Again, however, there is no showing that, assuming Hill and Greenland were aware of the nonclearance of Ralph Lingo, this conduct was considered sufficiently severe to warrant termination of employment, as opposed to a fine or some other lesser disciplinary conduct.

The most serious charge leveled against the discriminatees by Respondent is the one involving the performance of a considerable amount of work, not simply qualifying as service work, at times not consistent with the terms of their dispatch and possibly prior to being dispatched. Respondent's counsel made every effort to attempt to establish what had been taking place. However, it is clear that his ability to get to the bottom of this matter was hampered severely by the fact that Morrelli had gone "on vacation" after having received the General Counsel's subpoena.[31]

Without Morrelli, Respondent's counsel was left with considerable documentation which could not be explained except by calling the discriminatees who were, themselves, unable to explain what had been taking place. To some extent, the conclusion that Morrelli was fabricating bills as a means of garnering additional money from M & M and others is inferrable. That, however, would not, of itself, indict the discriminatees. Moreover, Lingo admitted knowingly participating in this fabrication on at least one occasion. But again, that cannot be held against the other five discriminatees, though the names of two of them were used, and there is no showing that Respondent would have ever concerned itself or applied any sanction against Lingo for this type of conduct.

[31] Though Respondent assails the General Counsel for waiting so long to serve a subpoena on Morrelli, it hardly seems likely that had the subpoena been served earlier, Morrelli would have remained. In this regard, I am disregarding the attack in Respondent's brief which is made on the investigation in this matter. That is simply not a matter within my scope or jurisdiction. Board's Statements of Procedure, Series 8, as amended, Section 101.4.

Other matters, such as Lingo's arrangement with Morrelli and the very high amount of overtime for which Hill was compensated by his final paycheck, may well indicate an impropriety through performance of additional work. Lingo was not, in my judgment, a straightforward individual when questioned on this facet of the case and I do not credit many of his answers in connection with his relationship with Morrelli. However, the point of the instant proceeding was not one of litigating whether or not there had been a contract violation or a hiring hall violation. Respondent had its opportunity to do that and rejected peaceful procedures for resolving those issues in favor of conduct which violated the Act. A major purpose of the Board's remedies for such violations is to deter future repetition and to restore the parties to the positions which they occupied prior to the unlawful conduct. Once that is accomplished, Respondent will then be free to consider what contract and internal disciplinary proceedings it may wish to institute, subject, of course, to the restrictions that it not be discriminatorily motivated and that it not be motivated by a desire to retaliate against the discriminatees. Until that is accomplished, public policy as reflected in the Act precludes Respondent from seeking to be spared from obligations arising from its violations of the Act by relying upon matters that could have been considered through the very peaceful procedures which Respondent rejected and supplanted by its unlawful conduct.

VI. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth above, occurring

in connection with the operations of M & M Electric Company and National Electrical Contractors Association Alaska Chapter, as described in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead, and have led, to labor disputes burdening and obstructing commerce and the free flow of commerce.

Conclusions of Law

1. International Brotherhood of Electrical Workers, Local 1547, is a labor organization within the meaning of Section 2(5) of the Act.

2. M & M Electric Company and National Electrical Contractors Association Alaska Chapter are employers within the meaning of Section 2(2) of the Act, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By threatening employees with physical harm, threatening to kill employees, assaulting employees, confiscating employees' dues receipts, confiscating trucks and tools owned by M & M Electric Company and forcing its employees to walk to Fairbanks, and by giving the impression of attempting to run over and hit employees walking alongside the Van Horn Road, Respondent engaged in acts of violence arising from a contract dispute and imposed its control over the labor relations policy of M & M and NECA, thereby violating Section 8(b)(1)(A) of the Act.

4. By engaging in the above-described acts of violence with the object of causing the termination of employees and by causing the termination of Danny Greenland, Thomas Hill, Larry L. Holder, George Klink and John Hatfield, Respondent violated Section 8(b)(2) of the Act.

5. By engaging in the above-described acts of violence with the object of causing the termination of a supervisor and by causing the termination of Alfred Lingo for the

purpose of restraining and coercing employees in the exercise of rights guaranteed them by Section 7 of the Act, Respondent violated Section 8(b)(1)(A) of the Act.

6. There is no evidence that Respondent, in the presence of employees, threatened to run out of Alaska an individual employed by M & M Electric Company as "foreman" and there is no violation of Section 8(b)(2) with respect to the termination of Lingo.

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action set forth below to effectuate the policies of the Act.

I shall recommend that Respondent notify M & M Electric Company, National Electrical Contractors Association Alaska Chapter, Alfred Lingo, Danny Greenland, Thomas Hill, Larry L. Holder, George Klink and John Hatfield, in writing, that it has no objection to the employment of Lingo, Greenland, Hill, Holder, Klink and Hatfield and, further, that Respondent request that M & M Electric Company offer reinstatement to each of them. It is also recommended that Respondent be required to make Lingo, Greenland, Hill, Holder, Klink and Hatfield whole for any loss of earnings they may have suffered by reason of its unlawful conduct in securing their terminations on August 25, 1975, with backpay to be computed on a quarterly basis, making deductions for interim earnings, and with interest to be paid at the rate of 6 percent per annum. *F. W. Woolworth Company*, 90 NLRB 289; *Isis Plumbing & Heating Co.*, 138 NLRB 716, enforcement denied on different grounds 322 F.2d 913 (C.A. 9, 1963).

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c)

of the Act, I hereby issue the following recommended:[32]

ORDER

Respondent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees, threatening to kill those employees, confiscating employees' dues receipts, conficating equipment being used by employees, giving the impression of driving an automobile in a manner designed to run over employees, or engaging in other acts of violence in order to enforce Respondent's interpretation of its collective-bargaining agreement with National Electrical Contractors Association Alaska Chapter or with any other employer.

(b) Engaging in acts of violence with the object of causing the termination of employees and causing the termination of employees through acts of violence designed to supplant orderly procedures for resolving disputes.

(c) Engaging in acts of violence with the object of causing the termination of supervisors and causing the termination of supervisors through acts of violence for the purpose of restraining and coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

(d) In any manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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[32] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Notify M & M Electric Company, National Electrical Contractors Association Alaska Chapter, Alfred Lingo, Danny Greenland, Thomas Hill, Larry L. Holder, George Klink and John Hatfield, in writing, that it has no objection to the employment of Lingo, Greenland, Hill, Holder, Klink and Hatfield, and request that M & M Electric Company offer reinstatement to each of them.

(b) Make Alfred Lingo, Danny Greenland, Thomas Hill, Larry L. Holder, George Klink and John Hatfield whole for any loss of pay they may have suffered by reason of the discrimination practice against them, in the manner set forth in the section entitled "The Remedy."

(c) Post at its Fairbanks, Alaska hiring hall copies of the attached notice marked "Appendix."[33] Copies of said notice on forms provided by the Regional Director 19, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and

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[33] In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

it hereby is, dismissed insofar as it alleges that on August 25, Respondent, in the presence of employees, threatened to run out of Alaska an individual employed by M & M Electric Company as "foreman" and insofar as it alleges that Respondent violated Section 8(b)(2) in connection with the termination of Lingo.

Dated: March 31, 1976

William J. Pannier III
Administrative Law Judge

APPENDIX

JD-(SF)-71-76

NOTICE TO MEMBERS

Posted by Order of the National Labor Relations Board an Agency of the United States Government

WE WILL NOT threaten you, threaten to kill you, confiscate your dues receipts, confiscate equipment that you are using, attempt to give you the impression that we are trying to run you down with our automobiles, or engage in any acts of violence against you in order to enforce our interpretation of our collective-bargaining agreement with National Electrical Contractors Association Alaska Chapter or with any other employer.

WE WILL NOT engage in acts of violence to cause you to be terminated and WE WILL NOT cause your termination through acts of violence designed to supplant orderly procedures for resolving disputes.

WE WILL NOT engage in acts of violence to cause the terminations of supervisors and WE WILL NOT cause the termination of supervisors through acts of violence designed to restrain and coerce you in the exercise of your rights under the National Labor Relations Act.

WE WILL NOT in any manner restrain or coerce you in the exercise of your rights under the National Labor Relations Act.

WE WILL notify M & M Electric Company, National Electrical Contractors Association Alaska Chapter, Alfred Lingo, Danny Greenland, Thomas Hill, Larry L. Holder, George Klink and John Hatfield, in writing, that we have no objection to the employment of Lingo, Greenland, Hill, Holder, Klink and Hatfield and WE WILL also request that M & M Electric Company offer reinstatement to Lingo, Greenland, Hill, Holder, Klink and Hatfield.

WE WILL make whole Alfred Lingo, Danny Greenland, Thomas Hill, Larry L. Holder, George Klink and John Hatfield for any loss of pay they may have suffered by reason of the discrimination practiced against them.

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1547
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This Is An Official Notice and Must Not Be Defaced by Anyone

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 29th Floor, Federal Building, 915 Second Avenue, Seattle, Washington 98174, Telephone Number.: (206) 442-7472.

Supreme Court, U. S.
FILED
MAY 17 1978
MICHAEL RODAK, JR., CLERK

No. 77-1347

In the Supreme Court of the United States

OCTOBER TERM, 1977

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1547, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

JOHN S. IRVING,
General Counsel,
National Labor Relations Board,
Washington, D.C. 20570.

In the Supreme Court of the United States

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MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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1. Petitioner is the exclusive representative of the employees of the M & M Electric Company, a Fairbanks, Alaska, electrical contractor. Under the collective bargaining agreement between the company and the union, the union operates a hiring hall from which employees are assigned to fill the company's needs on a routine basis (Pet. App. 14, 16).

In late August 1975, the company put in a call to the hiring hall for five employees to work straight 40-hour weeks for four weeks. Because there was other work available in the area at that time for which there were assurances of substantial overtime, a number of senior union members declined to accept the work with M & M.

As a result, the work was assigned to five of the less senior members, all of whom reported for work the next day (Pet. App. 35-36, 49-50).

At the end of the work day, one of the company's prime contractors informed company officials that it wanted some service work done immediately on another project. The company foreman assigned this emergency work to the handful of employees who were still present, including three of those who had been assigned from the hiring hall the previous day (Pet. App. 16-17).[1] Shortly after the employees arrived at the other project and began working, union business agent Daniel McLean entered the building along with a number of other union members. Charging that the men on that project had improperly been given overtime work, they disrupted the work, threatened and assaulted the employees, confiscated their dues receipts, forced them out of the building, and confiscated their trucks, forcing them to walk back to town (Pet. App. 17-21, 43-44). While the evicted employees were making their way back to town, McLean drove his truck off the pavement toward them, and they were forced to dive into a roadside ditch to avoid being hit (Pet. App. 21-22). The employees were later stopped and again accosted by McLean and his men (Pet. App. 22, 43-45).

[1]Petitioner suggests (Pet. 4 and n. 2) that the emergency assignment was arranged in an effort to circumvent the hiring hall provisions of the collective bargaining agreement, noting that several of the men were friends who had come to Alaska from Indiana, and that they were friends of a company foreman. A much simpler and less sinister explanation for the fact that the group of friends were still at the company office at the end of the day, when the new work was announced, was that they were preparing to celebrate the birthday of one of their members. The Administrative Law Judge credited this explanation rather than the union's (Pet. App. 17).

As the employees completed the service work the next afternoon, they were again approached by McLean and his men. The police intervened, preventing violence (Pet. App. 37, 44-45). Two days later, because of pressure by the union, the company discharged the five employees and the foreman who had been doing the service work (Pet. App. 37-38, 51-55).

2. Two of the discharged employees filed charges with the National Labor Relations Board, and a hearing was held on the charges. The Administrative Law Judge subsequently issued a comprehensive opinion, finding that petitioner had violated Sections 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act, 61 Stat. 140, 29 U.S.C. 158(b)(1)(A), 158(b)(2), by threatening and assaulting the employees and by causing them to be discharged (Pet. App. 13-67). He rejected petitioner's defense that the hiring hall call was fraudulent and that the emergency service work assignment was in violation of the terms of the collective bargaining agreement (Pet. App. 50-51). The Board adopted the Administrative Law Judge's decision (Pet. App. 11-12), and the court of appeals affirmed (Pet. App. 10).

3. Petitioner's sole contention is that the decision in this case is in conflict with *National Labor Relations Board* v. *Furriers Joint Council*, 224 F. 2d 78 (C.A. 2). In that case, the court of appeals held that the union did not violate the National Labor Relations Act when its agents attacked employees who were performing work in violation of the collective bargaining agreement. Since the employees were acting in violation of the contract, the court held, their conduct was not protected by the Act and the assaults on them, however unlawful under state or other federal laws, were not in violation of the National Labor Relations Act.

In this case, by contrast, the Administrative Law Judge specifically found that the employees were attacked and subsequently discharged for performing work that was assigned in accordance with the collective bargaining agreement (Pet. App. 50-51). Accordingly, even under the *Furriers* decision, petitioner's conduct would have been unlawful.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

JOHN S. IRVING,
General Counsel.
National Labor Relations Board.

MAY 1978.

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[2]The Board has not accepted the Second Circuit's decision in *Furriers*, as the Administrative Law Judge noted (Pet. App. 56-57). The Board's view is that violent conduct of the kind engaged in here is unlawful whether or not the victims are technically in violation of the terms of the collective bargaining agreement. *Teamsters Local 729 (Penntruck Co., Inc.)*, 189 N.L.R.B. 696; *Brewers Local 6 (Custom Packaging Corp.)*, 192 N.L.R.B. 1263. Yet while the Administrative Law Judge acknowledged that he was bound by the Board's precedents, he pointed out that even under the Second Circuit's view of the law, the union would be liable in this case, since "there has been no showing that the discriminatees [violated] the overtime provisions of [petitioner's] collective-bargaining agreement" (Pet. App. 57).